

Volume 18

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE WILLIAM H. ORRICK

IN RE KOREAN RAMEN ANTRITRUST LITIGATION,) No. C 13-4115 WHO
) San Francisco, California
) Tuesday
) December 11, 2018
) 7:30 a.m.

TRANSCRIPT OF JURY TRIAL PROCEEDINGS

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I N D E X

Tuesday, December 11, 2018 - Volume 18

DEFENDANTS' WITNESSES**KU, BANG-WAN**

(PREVIOUSLY SWORN)	2451	18
Direct Examination Resumed by Ms. Sweeney	2451	18
Cross-Examination by Mr. Birkhaeuser	2506	18
Redirect Examination by Mr. Edelman	2511	18
Recross-Examination by Ms. Sweeney	2524	18

HONG, DAE-SIK

(SWORN)	2526	18
Direct Examination by Ms. Yu	2526	18
Direct Examination by Mr. Dosker	2552	18

E X H I B I T S**TRIAL EXHIBITS**

12	2477	18	
20	2487	2488	18
184	2501	18	
369	2502	18	
375	2490	18	
500	2506	18	
646	2482	18	
1027	2454	18	
1030	2476	18	
1031	2475	18	
2027 conditionally	2513	18	
2030 conditionally	2524	18	

Tuesday - December 11, 2018

7:32 a.m.

P R O C E E D I N G S

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(Proceedings held in open court, outside
the presence and hearing of the jury.)

THE COURT: Two things. First, I have just finished and posted soon will be the Jury Instructions, and let's have a conference tomorrow at 3:00 o'clock.

And what I've done is I've deleted -- I'm keeping the numbering system in place for the moment. I've deleted the instructions that I don't intend to give, and we can have argument and you can -- if I've omitted something that I need to put back in, I'm sure you'll tell me.

So we've got one motion that I know about. I'm modifying my ruling on the Motions in Limine. I'm not inclined to do that. The plaintiffs can certainly comment on a failure of proof, but not that the defendants didn't bring witnesses to testify.

My rulings are longstanding. I think it would be unfair given the time limits. And, also, the fact that the plaintiffs didn't depose most of the witnesses that they would like to comment about, I think would be inappropriate.

And with Mr. Doh's -- the question about Mr. Doh, I struck the testimony that plaintiffs are raising in the motion. I don't think his declaration is contradictory necessarily. He

PROCEEDINGS

1 doesn't have the opportunity to explain what the differences
2 are. So, anyway. That's my ruling there.

3 Are there any other issues that we need to take up this
4 morning?

5 **MR. LEBSOCK:** Good morning, Your Honor.

6 It may be premature because I don't believe that Dr. Cox
7 is going to testify for a little bit yet today, but there are a
8 couple of issues that the plaintiffs had with the slide deck
9 that was proposed.

10 In one instance there is a reference to "government
11 control." And in two instances is there is references to a
12 suggestion that the government decides prices. I raised it
13 last night with the defendants. I'm not yet sure whether there
14 has been a revised slide deck or not.

15 **MR. GALL:** Good morning, Your Honor.

16 **THE COURT:** Good morning.

17 **MR. GALL:** John Gall for the Nongshim defendants.

18 We did, in fact, talk about this last night and I
19 appreciate Mr. Lebsock bringing it up. I think I understand
20 Your Honor's rulings and I think we're in compliance with Your
21 Honor's rulings.

22 The Nongshim defendants' people are the ones who actually
23 dealt with the government and who characterized the
24 government's role as one of exercising control. Nobody is
25 going to use the word "de facto" here.

PROCEEDINGS

1 But as far as the Nongshim defendants are concerned and
2 their perspective, the word "control" is on the slide in one
3 place on the Nongshim -- where Dr. Cox is going to testify
4 about the Nongshim defendants, the word "control" is in the
5 general overview; that it's a factor that he took into account
6 in analyzing the market from the Nongshim perspective.

7 On the way the pricing decisions were made for the
8 Nongshim defendants, I frankly don't recall how I got away from
9 the word "control," but somehow the slide now says "decides."
10 The government "decides" about prices.

11 And I'm happy to show Your Honor the slides to which
12 Mr. Lebsock is referring, if Your Honor would like to see them.

13 **THE COURT:** All right.

14 **MR. GALL:** The first one is the overview slide and
15 the word "control" appears at the bottom of number one.

16 (Whereupon document was tendered to the Court.)

17 **MR. GALL:** And as your Honor can see, that is the
18 first place in the outline for Dr. Cox that I would use the
19 word "control" and the slide appears to reference the Nongshim
20 defendants.

21 And the second --

22 **THE COURT:** Hang on.

23 **MR. GALL:** Yes, sir.

24 (Brief pause.)

25 **THE COURT:** All right.

PROCEEDINGS

1 **MR. GALL:** And the second one, Your Honor, these are
2 two slides. As your Honor will recall, Nongshim America has a
3 plant in California beginning in 2005. So Dr. Cox will discuss
4 the effect -- the pricing process before 2005 and after 2005.
5 These two slides exemplify the process and he'll go through
6 them.

7 And on the left-hand side in yellow you can see that I --
8 someone talked me out of "control" and I put in "decides." I
9 would urge the Court to allow me to do that. I think that
10 certainly accurately describes the process from my client's
11 perspective.

12 **THE COURT:** Mr. Edelman.

13 **MR. EDELMAN:** And, Your Honor, we're not using the
14 word "control" in the section of our discussion with Dr. Cox.
15 We have changed it, at Mr. Lebsock's request. It said:

16 "Government price control led to
17 follow-the-leader pricing in Korea."

18 Our section now says "government regulation."

19 **THE COURT:** All right.

20 **MR. LEBSOCK:** You know, we obviously have no
21 objection to words like "negotiation," "consultation," those
22 sorts of things. But when we talk about words like "decides,"
23 "control," it's -- first of all, Dr. Cox is just regurgitating
24 this. He doesn't have any personal knowledge of what the
25 situation is. So we just think it's inappropriate for them to

PROCEEDINGS

1 use those types of words.

2 **THE COURT:** You know, he's an expert. He's making
3 assumptions based on what his -- what the lawyers have told him
4 the evidence is. If the jury doesn't hear the same -- has not
5 heard the same thing as he's assuming, they are going to think
6 that his testimony isn't as persuasive as the defendants think
7 it is.

8 So I think in these -- I don't think these references are
9 objectionable, and I won't require the defendants to take them
10 out.

11 **MR. LEBSOCK:** Thank you.

12 **MR. GALL:** Thank you, your Honor.

13 **MR. EDELMAN:** Your Honor.

14 **THE COURT:** All right. Is there any other issue that
15 we ought to take up?

16 (No response.)

17 **THE COURT:** All right. See you at 8:00.

18 (Whereupon there was a recess in the proceedings
19 from 7:39 a.m. until 8:03 a.m.)

20 (Proceedings held in open court, in the presence and
21 hearing of the jury.)

22 **THE COURT:** All right. Please be seated, everybody.
23 Ladies and gentlemen, good morning. Welcome back.

24 Mr. Ku is still on the stand and Ms. Sweeney, I think,
25 you're cross examining.

BANG-WAN KU - DIRECT / SWEENEY

1 MS. SWEENEY: Thank you, your Honor.

2 BANG-WAN KU,

3 called as a witness for the Defendant herein, having been
4 previously sworn, resumed the stand and testified further
5 through a Korean interpreter as follows:

6 DIRECT EXAMINATION RESUMED

7 BY MS. SWEENEY

8 Q. Good morning, Mr. Ku.

9 A. Good morning, ma'am.

10 Q. I'd like to start by offering into evidence Exhibit 1029.
11 And this is the stipulation which the Court read to the jury
12 yesterday.

13 THE COURT: All right.

14 MR. EDELMAN: I defer to the Court on how the Court
15 wants to have that handled. I didn't think that's what we had
16 in mind, but I defer to Your Honor.

17 THE COURT: We'll take it up later. Let's proceed.
18 This is the stipulation that I read to you earlier about the
19 exhibits.

20 BY MS. SWEENEY

21 Q. Okay. Mr. Ku, yesterday we were talking about the 2004
22 memo that you recreated in July of 2008; do you recall that?

23 A. Yes.

24 Q. Okay. And I'd just like to establish the timeline. So
25 the KFTC came to Ottogi's premises on June 3rd, 2008; correct?

BANG-WAN KU - DIRECT / SWEENEY

1 A. Yes, that's correct.

2 Q. And a couple weeks later, on June 27th, Ottogi received
3 from the KFTC a letter requesting certain documents; is that
4 right?

5 A. Yes, that's correct.

6 Q. And then a few days later, around June 30th of 2008, your
7 supervisor Young-Hyun Doh called a meeting of various
8 departments to figure out how to respond to the KFTC letter;
9 correct?

10 A. Yes. He sent out an email calling for a meeting to be
11 held.

12 Q. And there was a meeting; right?

13 A. Well, as for that, I don't actually have any recollection
14 of there being a meeting.

15 Q. Okay. But so in response to Mr. Doh's request that you
16 assist in gathering information, you sent an email yourself on
17 July 2nd of 2008 to one of your subordinates to help you gather
18 information; is that right?

19 A. Per chance, are you referring to this one email that I
20 sent to a person named Yang, or actually a person named Chul?

21 Q. Yes.

22 A. Well, he's not a subordinate of mine, but send it I did,
23 yes.

24 Q. And the next day, which is July 3rd of 2008, you received
25 from Jae-Hwan Jung a copy of the 2004 memo in the version that

BANG-WAN KU - DIRECT / SWEENEY

1 you call the interim version; correct?

2 **A.** Yes, that's correct.

3 **Q.** Okay. And then you sent that memo to your subordinate
4 Ho-Joon Kang on the very next day, on July 4th.

5 I misspoke, can I withdraw the question? It was actually
6 on July 3rd that you sent that unaltered version of the 2004
7 memo to Ho-Joon Kang, your subordinate. And if you want to
8 refer to anything, Mr. Ku, that was Exhibit 359.

9 **A.** Yes, that's correct.

10 **Q.** Okay. And then the next day, and this is July 4th, you
11 received back from Ho-Joon Kang the 2004 memo, but this time
12 it's changed. The "Purpose" is changed, and all references to
13 competitors are removed, and the document is shorter; is that
14 right?

15 **A.** What I received back was a revised version to appear akin
16 to our, say, final reports of yore, of the past.

17 **Q.** And in that revised version, the references to competitors
18 have been removed and the "Purpose" has been changed; correct?

19 **A.** That's right. That format is so revised.

20 **Q.** Okay. And then on that same day you changed the name on
21 the memo from Kang-Hoon Lee to Jae-Hwan Jung.

22 **MS. SWEENEY:** And I'd like to offer into evidence
23 Exhibit 1027.

24 **BY MS. SWEENEY**

25 **Q.** Mr. Ku, do you still have Exhibit 1027 in front of you? I

BANG-WAN KU - DIRECT / SWEENEY

1 can get you another copy.

2 **A.** I have it.

3 **Q.** Okay. And, Mr. Ku, is this the version of the memo that
4 you created; that is, you took the memo that was sent to you by
5 Ho-Joon Kang and you changed the name to Jae-Hwan Jung?

6 **A.** Yes, that's correct.

7 **Q.** Okay.

8 **MS. SWEENEY:** I offer 1027 into evidence.

9 **MR. EDELMAN:** No objection, Your Honor.

10 **THE COURT:** Admitted.

11 (Trial Exhibit 1027 received in evidence).

12 **MS. SWEENEY:** Can we publish that?

13 (Document displayed)

14 **BY MS. SWEENEY**

15 **Q.** Okay. And then what you did next, Mr. Ku, was you took
16 Exhibit 1027, you printed it up, and you took it over to
17 Mr. Jung and Mr. Jung put his stamp on the document; right?

18 **A.** Yes, that's correct.

19 **MS. SWEENEY:** And, Jason, can we put Exhibit 976
20 side-by-side with 1027?

21 (Documents displayed)

22 **BY MS. SWEENEY**

23 **Q.** Okay. And these two exhibits are identical except for the
24 chop on 976; is that correct, Mr. Ku?

25 **A.** Yes, that's correct.

BANG-WAN KU - DIRECT / SWEENEY

1 **Q.** Okay. And you mailed the version with the chop to the
2 KFTC on that same day; is that right?

3 **A.** So it was a copy thereof that I sent off.

4 **Q.** Okay. So you made a copy of 976. Did you make more than
5 one copy?

6 **A.** Yes. To my recollection, I believe I made a couple of
7 copies.

8 **Q.** Okay. And what did you do with those copies?

9 **A.** So one of them I sent off to the KFTC and one I held onto.

10 **Q.** And the one that you held onto, what did you do with that?

11 **A.** So I held onto it within my drawers as reference material.

12 **Q.** And at some point in time you gave testimony in this case
13 in 2016; correct?

14 **A.** Yes, that's correct.

15 **Q.** And you gave testimony over four days in April of 2016; do
16 you remember that?

17 **A.** Yes, indeed.

18 **Q.** And during those four days of testimony, you didn't say
19 anything about this document with Jae-Hwan Jung's name and chop
20 on it that was sitting in your office; right?

21 **MR. EDELMAN:** Objection, your Honor. Compound.

22 **THE COURT:** Overruled. You can answer.

23 **A.** During that point in time, that is during my testimony,
24 that document was no longer in my drawers.

25

1 BY MS. SWEENEY

2 Q. Mr. Ku, you testified a couple weeks ago that --

3 A. Oh, hold on a second. You said September of 2016, yeah?

4 Q. April of 2016.

5 A. April of 2016. If we're talking about April 2016, as far
6 as I would think right now, I think there is a possibility that
7 the document may have been underneath my desk in a box because
8 by that point in time I'm thinking material was returned back
9 to me from -- by outside counsel.

10 Q. Okay. So you had the -- you had the document in your
11 office in a box underneath your desk in April 2016 and you
12 didn't say anything about that document over four days of
13 testimony; correct?

14 MR. EDELMAN: Excuse me, Your Honor. May we have a
15 brief sidebar?

16 THE COURT: Okay.

17 (Proceedings held at side bar.)

18 MR. EDELMAN: I may be mistaken, in which case I'll
19 be quiet about this, but I thought the purpose of the
20 stipulation was to avoid going into all of this; that we would
21 stipulate it was produced late. We agreed on the terms. It
22 went to the jury. And I didn't expect this line of inquiry in
23 light of the stipulation.

24 THE COURT: I did.

25 MR. EDELMAN: Okay.

BANG-WAN KU - DIRECT / SWEENEY

1 **THE COURT:** I thought that this witness's credibility
2 is very much on the line and I assumed that this would be
3 inquired into, so.

4 **MR. EDELMAN:** Very well.

5 **THE COURT:** Okay.

6 (Proceedings held in open court.)

7 **THE COURT:** Go ahead, Ms. Sweeney.

8 **MS. SWEENEY:** I'm going to ask the court reporter to
9 read back my question, please.

10 (Record read as requested.)

11 **A.** I was unaware as at the time as to this document being
12 inside that box at that time.

13 **BY MS. SWEENEY**

14 **Q.** Are you saying that you forgot? That you put -- you
15 changed the name on this 2004 memo and you had Mr. Jung put his
16 chop on it and that you had instructed your subordinate to
17 change the content of the memo; is that your testimony?

18 **MR. EDELMAN:** Objection. Compound.

19 **THE COURT:** Sustained.

20 **MS. SWEENEY:** Okay.

21 **BY MS. SWEENEY**

22 **Q.** You're saying that you forgot about this document that was
23 in a box underneath your desk in your office; is that right?

24 **A.** I had forgotten about the fact that this document was in
25 that box lying there in my office.

BANG-WAN KU - DIRECT / SWEENEY

1 **Q.** Did you forget about the fact that it was you who changed
2 the name from Kang-Hoon Lee to Jae-Hwan Jung and it was -- I'll
3 leave it there so I don't have a compound question.

4 **A.** What point in time are we talking about?

5 **Q.** April 2016.

6 **A.** At that time, during my testimony of that time, I had been
7 focusing on the fact that the content was changed, but I had
8 forgotten about the name having been changed.

9 **Q.** Even though that was something that you yourself did?

10 **A.** That's right. What I had in mind at that time was the
11 fact that it was a reconstructed document, but I had been
12 forgetting about the fact that the name had been changed.

13 **Q.** Now, in September of 2016, you gave a sworn declaration in
14 this case; do you remember that?

15 **A.** Yes, that's right.

16 **Q.** And that declaration was given -- strike that.

17 One of the topics of that declaration was the 2004 memo;
18 right?

19 **A.** That is right.

20 **Q.** And you signed that declaration under penalty of perjury
21 on September 28, 2016; is that right?

22 **A.** Yes, that's correct.

23 **Q.** And in that declaration when you talked about the 2004
24 memo, you didn't mention that you had changed the name to
25 Jae-Hwan Jung?

BANG-WAN KU - DIRECT / SWEENEY

1 **A.** So at that time I was only thinking in terms of the fact
2 that the document had been reconstructed, but I had forgotten
3 about the fact that the name had been changed.

4 **Q.** And did you also forget that you had -- and did you also
5 forget that the version that you had sent to the KFTC had
6 Mr. Jung's chop on it?

7 **A.** Yes. All those parts I had forgotten about.

8 **Q.** Okay. In fact, all you said in your declaration about
9 that, about the changes to the 2004 memo was:

10 "We received a copy of a draft memorandum from
11 Marketing Team 3 and reduced the length from seven
12 pages to three pages in order to conform the
13 memorandum to the length and style similar to the
14 final memoranda used in other years."

15 **A.** That is what I'm stating there, yes.

16 **Q.** Okay. And there is nothing in there about your role in
17 changing the document; right?

18 **A.** So at that time I was not able to recollect the fact that
19 I had changed the name.

20 **Q.** And you understand, Mr. Ku, that that document was not
21 produced to the plaintiffs in this litigation until
22 November 12, 2018?

23 **A.** Yes, I am aware of that.

24 **Q.** All right. Let's turn to the 2005 memo. Now, you
25 testified yesterday in response to Mr. Edelman's questions that

BANG-WAN KU - DIRECT / SWEENEY

1 the 2005 memo was not changed by you or anyone at Ottogi before
2 it was submitted to the KFTC; is that right?

3 **A.** That is correct.

4 **Q.** Okay. And the version that you say you received and then
5 submitted to the KFTC is Exhibit 644, which was offered into
6 evidence yesterday.

7 **MS. SWEENEY:** And can we publish that, please?

8 (Document displayed)

9 **A.** All right.

10 **BY MS. SWEENEY**

11 **Q.** Is that the version that you sent to the KFTC?

12 **A.** Per chance, is there a Korean version that I might look
13 at?

14 **Q.** Oh, I think it's in your binder. Mr. Edelman.

15 (Document displayed)

16 **A.** Right.

17 **Q.** Okay.

18 **MS. SWEENEY:** And now I'd like Jason to publish
19 Exhibit 384.

20 **BY MS. SWEENEY**

21 **Q.** And, Mr. Ku, I don't think you have a copy of this, so I'm
22 going to ask to get you a copy.

23 (Whereupon document was tendered to the witness.)

24 **Q.** Mr. Ku, if you could have a look at Exhibit 384, and
25 please turn --

BANG-WAN KU - DIRECT / SWEENEY

1 **MR. EDELMAN:** Do you have a copy for me?

2 **MS. SWEENEY:** Yes, I do.

3 (Whereupon document was tendered to counsel.)

4 **MR. EDELMAN:** Thank you.

5 (Brief pause.)

6 **MS. SWEENEY:** I apologize. I wanted 363 up.

7 (Document displayed)

8 **BY MS. SWEENEY**

9 **Q.** Okay. Mr. Ku, can you turn to the second page of
10 Exhibit 363 and have a look at the contents of this document?
11 Let me know whether it's the same document that you identified
12 yesterday with Mr. Edelman as being the final version that you
13 sent to the KFTC in 2008?

14 **A.** All right. So although I've not been able to make my way
15 through the entire document, it does strike me as being
16 similar.

17 **Q.** I'll represent to you that it's the same, and I'm sure
18 that Mr. Edelman will correct me if I'm wrong about that.

19 Now, if you could look at the first page of this document,
20 that is, the first page of Exhibit 363.

21 (Document displayed)

22 **A.** All right.

23 **Q.** Okay. And this shows that the document that is
24 content-wise the same as what you submitted to the KFTC was
25 sent to you by your supervisor Young-Hyun Doh on July 4, 2008;

1 correct?

2 **A.** Yes, that's correct.

3 **Q.** Okay. And do you know where Mr. Doh got the document?

4 **A.** What he told me was that he had received this from the
5 Marketing Office.

6 **Q.** Okay. And we can't tell where Mr. Doh got the document
7 because he didn't produce any emails in this case. Did you
8 know that?

9 **MR. EDELMAN:** Objection. Foundation, Your Honor.

10 **THE COURT:** What's the foundation for that?

11 **BY MS. SWEENEY**

12 **Q.** Mr. Ku, you were designated by Ottogi as the person
13 responsible to testify in this case about documents produced in
14 response to plaintiffs' document requests; correct?

15 **A.** Yes, that's correct.

16 **Q.** Okay.

17 **MS. SWEENEY:** And, Jason, can we show Exhibit 1016,
18 which has been admitted, and turn to Page 2 of that exhibit,
19 please?

20 (Document displayed)

21 **BY MS. SWEENEY**

22 **Q.** And, Mr. Ku, have a look at the first box where it says
23 Young-Hyun Doh.

24 **A.** Yes.

25 **Q.** And that was your supervisor in 2008; correct?

BANG-WAN KU - DIRECT / SWEENEY

1 **A.** Yes, that's correct.

2 **Q.** And you can see that he produced zero emails?

3 **A.** Yes.

4 **Q.** Okay. And this Exhibit 363 that we were looking at a
5 moment ago is an email from Mr. Doh to you. That email was
6 produced from your files, not from Mr. Doh's files. Do you
7 understand that?

8 **A.** Well, I don't know anything about it not being found among
9 his things, but I do know that it came via my, say, files.

10 **Q.** Okay. All right.

11 **MS. SWEENEY:** Now, can we put up 363 and 644
12 side-by-side please, Jason?

13 And if you could turn a couple pages in, so we have the
14 front page of the memo in each document?

15 (Documents displayed)

16 **BY MS. SWEENEY**

17 **Q.** And 654 [sic] is the version on the right with the chop,
18 and that's the version that you submitted to the KFTC; right?

19 **THE INTERPRETER:** Counsel meant 644?

20 **MS. SWEENEY:** Yes.

21 **THE INTERPRETER:** With that understanding.

22 **A.** Yes, that's correct.

23 **BY MS. SWEENEY**

24 **Q.** Okay. And when you received 363, that's the document on
25 the left, from your boss, Mr. Doh, you printed it up and had

1 Mr. Cho put his chop on it; right?

2 **A.** No.

3 **Q.** No. Can you turn to the last page, please, of
4 Exhibit 363?

5 (Witness complied.)

6 **MS. SWEENEY:** Jason, can we have the last page of
7 363, please?

8 (Document displayed)

9 **BY MS. SWEENEY**

10 **Q.** And, Mr. Ku, this is the metadata showing that you
11 modified this document on July 4, 2008; do you see that?

12 **A.** What do I need to do, look at this "Last Modified"
13 portion?

14 **Q.** Yes.

15 **A.** And what is -- "All Custodians" portion, does it mean that
16 it comes from my computer?

17 **Q.** I just want to draw your attention to the "Last Modified"
18 notation on the metadata which has your name next to it. Do
19 you see that?

20 **A.** Yes.

21 **Q.** Okay. Now, in July of 2008 Byung-Bak Cho was still
22 employed at Ottogi; correct?

23 **A.** Yes, that's correct.

24 **Q.** Okay. Now, can we turn to Trial Exhibit 384, which I
25 hope, Mr. Ku, you still have in front of you.

1 (Witness complied.)

2 Q. Okay. Let's turn to the second page of that document.

3 (Document displayed)

4 Q. Okay.

5 A. All right.

6 Q. And the title of this is "Review of Ramen Price Increase
7 Proposal;" right?

8 A. Yes, that's correct.

9 Q. Okay. And it has the date of February 28, 2005; is that
10 right?

11 A. Yes, that's correct.

12 Q. And it says "Marketing Team 3" and has the name Byung-Bak
13 Cho; right?

14 A. Yes.

15 Q. Okay. And if you look at the "Purpose" of the document,
16 it says:

17 "Seeking to maximize profits by improving the
18 cost structure, as in by increasing the price on ramen
19 products, given that even Samyang, too, has announced
20 a price increase, following in the footsteps of
21 Nongshim and Paldo, such that our company, too, is
22 desirous of implementing a price increase at the
23 opportune time when the consent/acquiescence of
24 customer and consumer alike might likely to be
25 expected to some extent."

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1 Do you see that?

2 **A.** Yes, I see it.

3 **Q.** Okay. And then if you look at the content of the document
4 under the numbered paragraphs, you'll see that there is a
5 number of references to Ottogi's competitors; right?

6 **A.** Yes, they are there.

7 **Q.** Okay. And if you were to count them, Mr. Ku, I -- I'll
8 represent that there will be roughly ten references to
9 Nongshim, and one reference to Yakult, and 18 references to
10 Samyang.

11 **A.** Okay. Not that I've counted. I do see a few, yes.

12 **Q.** Okay. And Exhibit 644, which is the 2005 memo that you
13 sent to the KFTC, has no references to Nongshim, Paldo or
14 Samyang; right?

15 **A.** Yes. Just quickly perusing through it, I don't see
16 anything.

17 **Q.** Okay. And it has quite a different "Purpose;" isn't that
18 right?

19 **MS. SWEENEY:** Jason, can we put "Purpose" of 644
20 along side the "Purpose" of 384?

21 (Documents displayed)

22 **A.** All right. I'm looking at them.

23 **BY MS. SWEENEY**

24 **Q.** Okay. And the "Purpose" in 654 [sic], which is -- it is
25 much shorter, correct, and it has no reference to Nongshim or

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1 Paldo or Samyang?

2 **THE INTERPRETER:** 644, counsel; right?

3 **MS. SWEENEY:** Yes.

4 **A.** Right. As was the case with both the 2007 and 2008 final
5 memo -- memos, this, too, does not have that.

6 **BY MS. SWEENEY**

7 **Q.** Okay. And I apologize for the number of documents. It's
8 kind of confusing, but as you recall Exhibit 384 is just like
9 644, except that 644 has the chop. Can you turn to the front
10 page of Exhibit 384, please?

11 (Witness complied.)

12 **A.** 384, you say?

13 **Q.** 384.

14 **A.** 384. All right.

15 (Document displayed)

16 **Q.** Okay. And can you first, Mr. Ku, just satisfy yourself
17 that the content of 384 -- that is, after the first page --
18 is the same as the document that you submitted to the KFTC in
19 July of 2008, except that this version does not have the chop
20 on it?

21 **A.** So between 384 and?

22 **Q.** 644.

23 **A.** 644.

24 (Documents displayed)

25 **A.** Not only is there this difference that 384 does not have

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1 the chop mark, this one, what is it, 384 is an interim report;
2 whereas, 644 is a final report.

3 Q. That was my fault, Mr. Ku. I asked you to compare the
4 wrong documents.

5 Let's just turn to the -- let's go back to the first page
6 of 384. Okay. And the -- this is the cover email that goes
7 along with what you describe as the interim report on 2004;
8 right?

9 A. For 2004, did you say?

10 Q. Let's look at the first page of Exhibit 384. This is an
11 email from yookh at Ottogi Ramen to other people at Ottogi
12 Ramen; correct?

13 A. Well, so I'm having problems here because I'm not entirely
14 familiar with the way Ottogi Ramen's address, you know, reads.
15 But it seems to me that there is a person named Yoo, Y-O-O, KH
16 I guess at Ottogi Ramen sending this email to various other
17 people.

18 Q. Okay. And the date of this email is March 9, 2005; right?

19 A. Yes, that's right.

20 Q. And the subject is "Regarding the Ramen Price Increase"?

21 A. Yes, that's right.

22 Q. Okay. And the email reads:

23 "As a heads-up, chairman Ham is said to have
24 approved today."

25 Do you see that?

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1 **A.** Yes, I see it.

2 **Q.** Okay. And then below it says:

3 "Note to relevant departments. You are kindly
4 requested to change the respective product packaging
5 forthwith."

6 **A.** I see it.

7 **Q.** And that note regarding changing the packaging, that's
8 important because Ottogi Ramen, which produces all of Ottogi's
9 ramen, prints the prices on the consumer packaging; is that
10 right?

11 **A.** That is right. They print the price of the ramen on the
12 packaging material.

13 **Q.** Okay. And then Chairman Ham, who do you understand that
14 to be referring to?

15 **A.** That would be the chairman of Ottogi Korea.

16 **Q.** Okay. And then at the very bottom of this email it says:

17 "Review of ramen price increase proposal 5.1.21."
18 And it has a document extension there. Do you see
19 that?

20 **A.** Yes, I see it.

21 **Q.** And then if you turn the page, this is the attachment to
22 that email talking about the price increase that was approved
23 by Chairman Ham today; right?

24 **A.** Yes.

25 **Q.** Okay. And the memo that is attached is what you have been

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1 referring to as the interim memo; right?

2 **A.** Yes, that's correct.

3 **Q.** But Ottogi Ramen is using what you call the interim memo
4 to change prices on the consumer packaging; is that right?

5 **A.** So in going about changing the price, in terms of the
6 final -- well, so what's important for Ottogi Ramen's purposes
7 is in terms of going about printing the final consumer price
8 is -- well, it's -- that's what's important to them. And so
9 long as there are no other changes, then the rest of it doesn't
10 matter.

11 **Q.** Now, you testified yesterday in response to Mr. Edelman's
12 questions about what you called the Request For Approval
13 packages; do you remember that?

14 **A.** Yes.

15 **Q.** And when the chairman of the company, at this point in
16 time Mr. Ham, gives final approval for a price increase, he's
17 presented with a package that contains, among other things, a
18 final memo which is a review of the price increase proposal;
19 right?

20 **A.** Yes, that's correct.

21 **Q.** Okay. Let's move on to the 2002 memorandum. Do you
22 recall your testimony yesterday about a 2002 pricing
23 memorandum?

24 **A.** Yes, I do recall.

25 **Q.** Okay. And you said that in response to the KFTC's request

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1 for information, you recreated a price increase memo from 2002;
2 right?

3 A. So in terms of this reconstruction -- now, I'm not sure
4 how this translation is coming out, but basically what I didn't
5 have, I had to come up with. And I was not able to find this
6 interim memo at the time for the year 2002 either.

7 Q. And this is something that you submitted to the KFTC in
8 response to their request in 2010; right?

9 **THE INTERPRETER:** 2010?

10 **MS. SWEENEY:** I'm sorry. Yeah, 2010.

11 **BY MS. SWEENEY**

12 Q. It was later than the others; correct?

13 A. Yes, that's correct.

14 Q. Okay. And you testified that you created this document
15 from scratch; right?

16 A. Given that I had nothing at all, I had to come up with it
17 from scratch.

18 Q. Okay.

19 **MS. SWEENEY:** Jason, can we publish Exhibit 357,
20 please?

21 (Document displayed)

22 **BY MS. SWEENEY**

23 Q. Okay. Do you have that in front of you?

24 A. Yes. I'm looking at it.

25 Q. Okay. And the front page of this document is an email

1 from you dated February 11, 2010 to H. Jun and the subject is
2 "This One;" right?

3 **A.** Yes.

4 **Q.** Okay. And then there is an attachment that's called
5 "Review of Ramen Price Increase Proposal;" right?

6 **A.** Yes.

7 **Q.** Okay. And then if you turn to the next page, you'll see
8 the content of the document.

9 (Document displayed)

10 **Q.** Do you see that?

11 **A.** Yes, I see it.

12 **Q.** Is this a document that you submitted to the KFTC in 2010?

13 **A.** Yes, that would be my recollection.

14 **Q.** Okay. Now, what is the date on this memo?

15 **A.** November 20th, 2002.

16 **Q.** Okay. But you created this document in 2010; right?

17 **A.** Yes. I came up with this after speaking with the KFTC and
18 then submitted it.

19 **Q.** And just as with the 2004 memo, you didn't put anything on
20 the face of this document indicating that it was something that
21 you had created in 2010; right?

22 **A.** Right. I did not make an indication on the document
23 itself. I simply had a conversation over the phone with the
24 KFTC.

25 **Q.** Now, you could have put a footnote in there saying, "This

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1 is a recreated approximation of the actual 2002 memo," but you
2 didn't do that, did you?

3 **A.** Well, I couldn't have done that because what I promised
4 them that I would come up with was something that would most
5 approximate the final report. So that would not have been
6 allowable for me to do.

7 **Q.** Did you send it with a cover letter saying, "This is an
8 approximation of the 2002 report"?

9 **A.** No. There is nothing that I sent over in document form
10 like that.

11 **Q.** And did you write a memo to the file explaining what you
12 had done to recreate the 2002 memo?

13 **A.** No. There is no, say, indication as such on the document
14 or in the document.

15 **Q.** And there is nothing in the document that indicates that
16 you had anything at all to do with this 2002 memo recreation;
17 right?

18 **A.** Right. There is nothing in terms of the document itself,
19 per se.

20 **Q.** Is there anything other than a document itself? For
21 example, did you send a letter to the KFTC saying, "I recreated
22 this 2002 memo and I submit it to you as the best approximation
23 of the actual 2002 memo."

24 Did you do that?

25 **A.** The KFTC desired no such document. All they wanted to

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1 have was the final document only.

2 **MS. SWEENEY:** I move to strike and I'm going to ask
3 the question again.

4 **THE COURT:** Overruled.

5 **BY MS. SWEENEY**

6 **Q.** Mr. Ku, the 2002 memo that you sent to the KFTC has a
7 "Purpose" that is very much like the "Purpose" in the 2004 and
8 2005 memos that you sent to the KFTC; correct?

9 **A.** That's right. I came up with that based upon looking at,
10 say, data or material pertaining to the year 2002 time frame,
11 such as, you know, things about the price of wheat, flour and
12 such.

13 **Q.** Okay. And like the 2004 and 2005 memos, the 2002 memo
14 that you recreated does not have any references to Yakult or
15 Samyang; right?

16 **A.** Well, the fact is I'm the one who had created the '07 and
17 '08 memos and, likewise, you know, the person, whoever it was
18 back in 2002, would have done the same. So it goes without
19 saying that those references would not be there.

20 **Q.** Let's move to another topic.

21 Mr. Ku, you testified yesterday that you were the person
22 who spearheaded the efforts in 2008 to prepare and submit to
23 the KFTC a number of documents that the KFTC requested;
24 correct?

25 **A.** Yes, that's correct.

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1 **Q.** Okay. I'd like to show you two documents which have been
2 marked for identification as Exhibits 1030 and 1031.

3 **MS. SWEENEY:** May I approach, Your Honor?

4 **THE COURT:** You may.

5 (Whereupon documents were tendered to the witness.)

6 **BY MS. SWEENEY**

7 **Q.** Mr. Ku, if you could have a look first at Exhibit 1031.

8 (Witness complied.)

9 **A.** Is it this one? All right.

10 **Q.** Is that something that you prepared for submission to the
11 KFTC, Mr. Ku?

12 **A.** Yes. It appears to be something that I prepared in
13 concert with some other department or departments for
14 submission purposes.

15 **Q.** Okay.

16 **MS. SWEENEY:** I move to offer that into evidence.

17 **THE COURT:** Any objection?

18 **MR. EDELMAN:** None, Your Honor.

19 **THE COURT:** It's admitted.

20 (Trial Exhibit 1031 received in evidence).

21 **BY MS. SWEENEY**

22 **Q.** Mr. Ku, if you could turn to the next document, which is
23 Trial Exhibit 1030?

24 **A.** All right.

25 **Q.** Is this document also something that you prepared to

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1 submit to the KFTC?

2 **A.** Yes. To my recollection, I worked on this and sent it
3 over.

4 **Q.** Okay.

5 **MS. SWEENEY:** Your Honor, plaintiffs move to enter
6 Exhibit 1030.

7 **MR. EDELMAN:** No objection.

8 **THE COURT:** It's admitted.

9 (Trial Exhibit 1030 received in evidence)

10 (Document displayed)

11 **BY MS. SWEENEY**

12 **Q.** All right. I'm going to move to another document that you
13 prepared, I believe, in connection with the KFTC investigation.

14 **MS. SWEENEY:** Can we have a look at Exhibit --
15 actually, it hasn't been admitted yet. So I would like to show
16 the witness Trial Exhibit 12.

17 May I approach, Your Honor?

18 **THE COURT:** You may.

19 (Whereupon document was tendered to the witness.)

20 **BY MS. SWEENEY**

21 **Q.** All right. Mr. Ku, what is Trial Exhibit 12?

22 **A.** These are details of personnel who participated in the
23 price determination during ramen price increases.

24 **Q.** Is this a document that you created and submitted to the
25 KFTC?

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1 **A.** Yes, that's correct.

2 **MS. SWEENEY:** Plaintiffs move its admission.

3 **MR. EDELMAN:** No objection.

4 **THE COURT:** It's admitted.

5 (Trial Exhibit 12 received in evidence)

6 **MS. SWEENEY:** Can we publish that, please?

7 (Document displayed)

8 **BY MS. SWEENEY**

9 **Q.** And these are all the various departments and personnel
10 who participated in the price adjustments between May 1 of 2002
11 through sometime in 2008; is that right?

12 **A.** Yes, that's correct.

13 **Q.** And, Mr. Ku, the Sales Planning Division, which is your
14 department, doesn't appear until the very last box; right?

15 **A.** Yes, that's correct.

16 **Q.** Okay. And your name doesn't appear until the very last
17 box; correct?

18 **A.** Yes, that's correct.

19 **Q.** Okay. And, in fact, before 2007 there were other
20 departments that were responsible for price increases of ramen
21 at Ottogi; right?

22 **A.** Yes, that's correct.

23 **Q.** Okay. And so in -- between 2002 and 2003 it was the
24 Management Planning Team that was responsible; right?

25 **A.** Yes, that's correct.

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1 **Q.** And then after that it was the Product Planning Team?

2 **A.** Yes. That was done together by the Product Planning Team
3 and the Marketing Office.

4 **Q.** Okay. And the Marketing Office was involved for a number
5 of years in setting the prices for ramen; correct?

6 **A.** Yes. You see Marketing Office appearing twice here.

7 **Q.** Okay. And they were responsible for the price increases
8 in 2004 and 2005; right?

9 **A.** Yes.

10 **Q.** Okay. And you remember Mr. Edelman showed you a chart
11 that he had prepared showing the organizational structure of
12 Ottogi?

13 **A.** Yes, I recall.

14 **Q.** Okay.

15 **MS. SWEENEY:** Could we show that to the jury -- or to
16 Mr. Ku? Do we have it?

17 Actually, I was looking for the document that the
18 defendants created.

19 **MR. EDELMAN:** Our chart?

20 **MS. SWEENEY:** Yes.

21 (Discussion held off the record between counsel.)

22 **MS. SWEENEY:** And I believe this has been marked for
23 identification as 2020. Can we publish that, please?

24 Oh, I'm sorry?

25 **MR. EDELMAN:** 2021.

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1 MS. SWEENEY: 2021.

2 THE COURT: Is it in evidence?

3 MS. SWEENEY: It's not in evidence.

4 MR. EDELMAN: It's not, although I had intended to
5 offer it into evidence. So if you want to display it, that's
6 fine.

7 MS. SWEENEY: Mr. Edelman had been displaying it in
8 the board form, which we could put up, or we could just put it
9 on the screen.

10 THE COURT: Either way. Either way you do it is
11 fine.

12 MS. SWEENEY: Okay. We can put the board up.

13 (Demonstrative displayed)

14 MS. SWEENEY: Thank you, Mr. Edelman.

15 BY MS. SWEENEY

16 Q. So, Mr. Ku, looking at this, at this organizational chart,
17 the Management Planning Team, the Product Planning Team and the
18 Marketing Office are not on the left-hand side of this chart;
19 right?

20 And I realize it's in English, so maybe that's not
21 something that you can answer. But let me ask you this
22 question: Would it be appropriate to include on an
23 organizational chart that shows who sets the prices for ramen,
24 would it be appropriate to include the Marketing Office, the
25 Product Planning Team and the Management Planning Team when

1 you're talking about the time period 2001 through 2008?

2 **A.** Well, that board, I believe, is part of a simplified
3 representation of things and, indeed, the facts are a little
4 more complex, such as the table of organization that we just
5 briefly perused through.

6 **Q.** But if you're talking about the period prior to 2007,
7 isn't it inaccurate to identify the Sales Planning Office and
8 not mention the Marketing Office or the Management Planning
9 Team or the Product Planning Team?

10 **A.** It would seem to me that perhaps they came up with
11 something that simply would just show the flow of things,
12 because were they to try to represent everything for the
13 benefit of the jury, then I think it would be a little too
14 complex.

15 **Q.** Mr. Ku, can you look at the last set of boxes on
16 Exhibit 12?

17 **A.** Okay.

18 **Q.** And you see there where it says Director Ki-Soo Kim?

19 **A.** Yes.

20 **Q.** Okay. And Mr. Ki-Soo Kim, he was the director of the
21 Sales Planning Division from September 1 of 2007 forward?

22 **A.** No. This chart is -- well, to be most accurate, he was
23 not with the Sales Planning Division. Rather, he was serving
24 as the head of the Sales HQ.

25 **Q.** But you identify him in Trial Exhibit 12 as someone who

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1 participated in the price determination during ramen price
2 increases. Sometime after September 1, 2007, did Ki-Soo Kim
3 have responsibility for pricing for ramen?

4 **A.** So the actual determination of pricing per se is done by
5 the Sales Planning Division itself, but this gentleman was
6 indicated here because said Sales Planning Division is under
7 his auspices. Him being the head of the Sales HQ.

8 **Q.** But he was involved in price increases of ramen; right?

9 **A.** Well, in terms of the hierarchical line, he's there. I
10 mean, in terms of the determination of the ramen price.

11 **Q.** Mr. Kim approved price increases; right?

12 **A.** Yes, that's correct.

13 **Q.** Okay. And Mr. Kim was the boss of your boss Young-Hyun
14 Doh; right?

15 **A.** Yes, that's correct.

16 **Q.** And Ki-Soo Kim attended the Ramen Conference in the years
17 2005, 2006, 2007 and 2008; right?

18 **A.** Yes, that's correct.

19 **Q.** And before Ki-Soo Kim attended the Ramen Conference, it
20 was attended, as you testified yesterday, by Geun-Ho Choi;
21 right? And that's G-E-U-N. Ho, H-O. Choi, C-H-O-I.

22 **A.** Yes, that's correct.

23 **Q.** Okay. I'd like to show the witness Exhibit 646.

24 **MR. EDELMAN:** Your Honor, may I inquire of counsel if
25 I can take this board down now?

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1 **MS. SWEENEY:** Sure. Thank you.

2 (Demonstrative removed from display)

3 **MS. SWEENEY:** May I approach, Your Honor?

4 **THE COURT:** Yes.

5 (Whereupon document was tendered to the witness.)

6 **BY MS. SWEENEY**

7 **Q.** All right. Mr. Ku, I've handed you what has been marked
8 as Trial Exhibit 646, and this is an organization chart as of
9 August 1, 2000.

10 Mr. Ku, have you seen organizational charts like
11 Exhibit 646 before?

12 **A.** Yes, I have.

13 **Q.** Okay.

14 **MS. SWEENEY:** And I offer this into evidence.

15 **MR. EDELMAN:** No objection, your Honor.

16 **THE COURT:** It's admitted.

17 (Trial Exhibit 646 received in evidence).

18 **MS. SWEENEY:** Can we publish that, please?

19 (Document displayed)

20 **BY MS. SWEENEY**

21 **Q.** All right. I think one of the exhibits we looked at
22 yesterday identified Geun-Ho Choi as the senior manager of
23 Business Division 2. Do you remember that?

24 **A.** Yes, that's correct.

25 **Q.** Okay. And do you see Business Division 2 on this chart?

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1 **A.** You're talking about -- yes, Business Division 2 here;
2 right? I see it, yes.

3 **Q.** Okay. So Mr. Choi in 2001 was head of Business
4 Division 2, which is on this organizational chart 646; right?

5 **A.** So, right. Not that I have a precise recollection, but
6 that would seem to be what I think I recall.

7 **Q.** Okay. And that's a fairly high level executive position
8 within Ottogi; right?

9 **A.** Well, I don't know what the, say, criterion might be in
10 terms of what is high or not high, but it is true that he was
11 in charge of that unit.

12 **Q.** Okay. And I believe you also testified yesterday in
13 response to Mr. Edelman's questions that because Mr. Choi was
14 in sales, he had no responsibility for pricing. Is that what
15 you said yesterday?

16 **A.** Yes, that's correct.

17 **Q.** Okay. And, yet, Mr. Ki-Soo Kim, who approved price
18 increases at least since 2007 and 2008, his position was as
19 supervisor of sales; right?

20 **A.** Well, back during this relevant period of time, although
21 I was within the -- under the umbrella of Sales HQ, I was not
22 handling sales at that time.

23 **Q.** In 2015 and 2008 you worked for Mr. Kim; right?

24 **A.** Speaking with respect to Mr. Ki-Soo Kim, he at one time or
25 another did handle sales personally and at some other times he

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1 was not handling sales personally, but, rather, was within the
2 overall Sales HQ.

3 So during this relevant point in time when I was with the
4 Sales Planning Division and when I indicated that he had any
5 responsibility for determining sales, when he had authority as
6 to price determination, that is when he was with the overall
7 Sales HQ, but not engaged in sales per se.

8 **Q.** I'd like to show the witness Trial Exhibit 13.

9 (Brief pause.)

10 **MS. SWEENEY:** We'll have to come back to that
11 document.

12 **BY MS. SWEENEY**

13 **Q.** Mr. Ku, you testified yesterday about the Ramen
14 Conference. And that conference stopped being held in 2010;
15 right?

16 **A.** I don't quite know as to the date on which that ceased.

17 **Q.** But it did cease; right?

18 **A.** I don't know that I could give you a definitive answer on
19 that.

20 **Q.** You gave some testimony in a deposition about the Ramen
21 Conference; do you remember that?

22 **A.** I do recall.

23 **Q.** And do you recall testifying in that deposition that the
24 Ramen Conference was not held in 2010 or after 2010?

25 **A.** That I do recall, but right now it seems to me that you're

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1 asking me for something exact. So in that regard, I'm not sure
2 I can give you an answer.

3 Q. Okay. Now, and it's true, isn't it, that during the years
4 2001 through 2009 when the Ramen Conference met, there were
5 only four companies that attended the Ramen Conference; right?

6 A. Yes. There were four ramen companies.

7 Q. And that was Ottogi, Nongshim, Yakult and Samyang; right?

8 A. Yes, that's right.

9 Q. Okay. And you testified yesterday that the Ramen
10 Conference was related to tax collection; right?

11 A. Yes. It's an organization put together by the National
12 Tax Service.

13 Q. Okay. But even though the Ramen Conference is no longer
14 being held, the taxes that ramen companies -- ramen companies
15 still have to pay taxes; right?

16 A. So that you know, the Ramen Conference was put together
17 not because the ramen companies were cheating on their taxes.
18 Rather, the government was asking for the ramen companies' help
19 so as to prevent the middlemen from transacting under the
20 table.

21 Q. Okay. Understood. Thank you.

22 Now, can we turn back please to Trial Exhibit 12?

23 (Document displayed)

24 Q. And if you look at the first page under the bottom set of
25 boxes, by Marketing Office it says "Team Leader Byung-Bak Cho."

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1 Do you see that?

2 A. Yes, I see it.

3 Q. Okay. And during that period of time, that is 2004, 2005,
4 Byung-Bak Cho was someone who worked in the Marketing Office
5 and had responsibility for pricing of ramen; right?

6 A. Yes, that is correct.

7 Q. And below his name is Jae-Hwan Jung; do you see that?

8 A. Yes, I see it.

9 Q. Okay. And Jae-Hwan Jung also worked in the Marketing
10 Office and had responsibility for pricing of ramen; right?

11 A. Yes. As of that point in time, that is my understanding,
12 yes.

13 Q. Okay. And Jae-Hwan Jung was working at Ottogi, at least
14 in July of 2008 when you submitted the pricing memoranda to the
15 KFTC; right?

16 A. Yes, he was there at that time.

17 Q. And, in fact, you and Mr. Jung were in the same general
18 office area; correct?

19 A. Yes, that's right.

20 Q. And his desk was only, like, ten meters from yours?

21 A. That is correct.

22 Q. Okay. Now, Mr. Jung is someone from the Marketing Team
23 who provided to you information about the competitive situation
24 which you used in determining price increases; right?

25 A. So as of when -- could you specify the time or the date

BANG-WAN KU - DIRECT / SWEENEY

1 for me, please?

2 Q. Sure. How about 2007, 2008?

3 A. Okay. So he was one of many people who would provide me
4 with such kind of information.

5 Q. Okay. And yesterday Mr. Edelman showed you a couple of
6 memos, or at least one memo that Mr. Jung had prepared; right?

7 A. So for what year are you talking about?

8 Q. The memo that you looked at yesterday, I believe, was
9 Exhibit 344.

10 A. Yes.

11 Q. Okay.

12 MS. SWEENEY: And then I'd like to mark for
13 identification Trial Exhibit 20.

14 (Trial Exhibit 20 marked for identification.)

15 (Whereupon document was tendered to the witness.)

16 BY MS. SWEENEY

17 Q. Now, Mr. Ku, is the document that's been marked as Trial
18 Exhibit 20 a -- one of the kinds of memoranda that you received
19 from Jae-Hwan Jung and others from the Marketing Team in 2007?

20 A. Yes, there is such a possibility.

21 Q. Is Exhibit 20 in the form of many of the memoranda that
22 you received and reviewed in 2007?

23 A. Yes, indeed.

24 Q. Okay.

25 MS. SWEENEY: Plaintiffs offer Exhibit 20.

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1 **MR. EDELMAN:** No objection.

2 **THE COURT:** It's admitted.

3 (Trial Exhibit 20 received in evidence).

4 (Document displayed)

5 **BY MS. SWEENEY**

6 **Q.** Okay. Mr. Ku, look at the title. It says "Opinion on
7 Price Increase of Ramen Products." Do you see this?

8 **A.** Yes, I see it.

9 **Q.** And over on the right-hand side it says "July 18, 2007,
10 Marketing Team 3." Do you see that?

11 **A.** Yes, I see it.

12 **Q.** And in 2007 Jae-Hwan Jung and Byung-Bak Cho were both
13 employed in Ottogi's Marketing Team 3; right?

14 **A.** Yes, that's correct.

15 **Q.** Okay. And the content of this memo is describing the
16 competitive situation and making recommendations with respect
17 to Ottogi's price increases; right?

18 **A.** Yes.

19 **Q.** Okay. And some of this information that's contained in
20 this memo came directly from Ottogi's competitor; correct?

21 **A.** Yes, that's correct.

22 **Q.** Okay. And if you look at the very -- the sentence just
23 above the box on the second page of this document, do you see
24 where it says "phone conversation"?

25 **A.** Yes, I see it.

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1 Q. Okay. And here the author of this memo is referring to:

2 "Phone conversation with Jong-Moon Yui of
3 Samyang, assistant manager - reaction post-price
4 increase."

5 Do you know who Mr. Jong-Moon Yui is?

6 A. I don't know who that is.

7 Q. But it's someone who at that time, in 2007, was in
8 Samyang's Marketing Department?

9 A. At Samyang? Well, there is nothing I can tell you about
10 this person because I don't know anything about this person,
11 so...

12 Q. Okay. But that's what it says in the memo; right?

13 A. Yes, that's correct.

14 Q. Okay.

15 THE COURT: Ms. Sweeney, is this a good time for a
16 break?

17 MS. SWEENEY: Yes, it is, Your Honor.

18 THE COURT: Ladies and gentlemen, we'll take our
19 morning recess for 15 minutes. Please remember the
20 admonitions.

21 (Recess taken at 9:46 a.m.)

22 (Proceedings resumed at 10:01 a.m.)

23 THE COURT: All right. Please be seated, everybody.

24 Ms. Sweeney, go ahead.

25 MS. SWEENEY: Thank you, Your Honor. I'd like to

1 start by showing the witness Trial Exhibit 375.

2 May I approach, Your Honor?

3 **BY MS. SWEENEY:**

4 **Q.** Mr. Ku, my first question is, are you familiar with
5 Exhibit 375?

6 **A.** Yes, I am indeed.

7 **Q.** And this is the proposal form for the price increase of
8 ramen in 2008, right?

9 **A.** Yes, that's correct.

10 **Q.** And you were involved in the 2008 price increase, correct?

11 **A.** Yes, that's correct.

12 **MS. SWEENEY:** Plaintiffs offer Exhibit 375.

13 **MR. EDELMAN:** No objection.

14 **THE COURT:** It's admitted.

15 (Trial Exhibit 375 received in evidence)

16 **BY MS. SWEENEY:**

17 **Q.** Okay. Mr. Ku, I think you testified yesterday about this
18 kind of document. This is also sometimes called an inception
19 document, right?

20 **A.** Yes, that's correct.

21 **Q.** Okay. And this document shows the approvals and the chops
22 of various executives of the price increase that was adopted in
23 2008, right?

24 **A.** That is correct.

25 **Q.** Over on the far right-hand side we have the name and chop

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1 of the president, Young-Joon Ham?

2 **A.** Yes.

3 **Q.** Okay. And then there's someone named Kang-Hoon Lee. Is
4 that a different Kang-Hoon Lee from the employee whose name was
5 on the marketing memo that you said left the company?

6 **A.** Right. They just have the same name.

7 **Q.** And then it was also approved by Ki-Soo Kim, right?

8 **A.** Yes.

9 **Q.** And then your supervisor, Young-Hyun Doh. That's his
10 chop, right?

11 **A.** Yes, that's correct.

12 **Q.** If you could go down into the next set of boxes that says
13 Proposal there. Do you see that?

14 **A.** Yes.

15 **Q.** And to the right of that there's a date of February 26,
16 2008, right?

17 **A.** Yes, I see it.

18 **Q.** All right. And is that the date of the proposal, as
19 opposed to the approval of the price increase?

20 **A.** Well, it is the date on which it was proposed, but
21 typically on the quick end sometimes you obtain approval on the
22 same day, though.

23 **Q.** Sometimes it can take quite a few days between the
24 proposal and the approval, right?

25 **A.** Yeah, on occasion there are such times, as well.

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1 **Q.** And for this particular price increase proposal -- that
2 is, for 2008 -- you can't tell from this document what the date
3 of approval is, right?

4 **A.** That is right.

5 **Q.** And just to clarify, in the box above the date of
6 2-26-2008 there are a series of numbers. But that's not a
7 date, right?

8 **A.** That is right. That's not a date.

9 **Q.** That's the document control number. Looking at about
10 halfway down the page it says date of adjustment as of April 1,
11 2008. That's the date this particular price increase became
12 effective, right?

13 **A.** That is correct.

14 **Q.** Then if you go about four-pages into this document there's
15 something called a business communication dated March 5, 2008.

16 **A.** March 8?

17 **Q.** I'm sorry. March 5, 2008. Thank you.

18 **A.** Yes, I see it.

19 **Q.** Okay. So would you agree that the approval for this price
20 increase for 2008 occurred sometime between the 26th of
21 February and March 5, 2008?

22 **A.** Yes, that's right.

23 **MS. SWEENEY:** Okay. Now I'd like to show the witness
24 what has been marked Exhibit 44, and this had been
25 conditionally admitted.

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1 Can we publish, Your Honor?

2 **THE COURT:** No, I don't think so.

3 **MS. SWEENEY:** Oh, I'm sorry. I thought that had been
4 admitted.

5 **THE COURT:** No. That's the exhibit of all of the
6 emails?

7 **MS. SWEENEY:** Yes.

8 **THE COURT:** And you can show him specific -- show him
9 specific documents.

10 **MR. EDELMAN:** And of course there's an issue as to
11 when is these emails --

12 **MS. SWEENEY:** May I approach, Your Honor?

13 **BY MS. SWEENEY:**

14 **Q.** Okay. Mr. Ku, I handed you what's been marked for
15 identification as Exhibit 44. And just have a look through
16 that.

17 **A.** I've gone through it.

18 **Q.** And if you could go to the document that has -- excuse me
19 -- the page that has the Bates number SHD 00003130 in the
20 English version.

21 **MS. SWEENEY:** Perhaps Mr. Interpreter could help him
22 find the right page. I'm looking for number 24.

23 **A.** We're there. I'm looking at it.

24 **Q.** Do you see the information and the text below the number
25 24?

BANG-WAN KU - DIRECT / SWEENEY

1 **A.** Yes, I do.

2 **Q.** Okay. And do you recognize that email address there for
3 Jae-Hwan Jung?

4 **A.** Well, there appears the name Jae-Hwan Jung.

5 **Q.** There's the name Jae-Hwan Jung, and then there's also an
6 email address after it, right?

7 **A.** Yes, there is an email address.

8 **Q.** That is the email address Mr. Jung used when he was
9 employed by Ottogi in 2008?

10 **A.** I would believe that to be the case.

11 **Q.** Well, in fact, we looked at some emails today that you
12 received from Jae-Hwan Jung in 2008 when you were preparing the
13 approximated memos. Is this the same email address that he
14 used then?

15 **A.** Yes. This email address is that email address.

16 **Q.** Okay. And you know that in 2007 and 2008 Mr. Jung was
17 getting information directly from Ottogi's competitors about
18 the competitive market situation, correct?

19 **A.** No, I have not heard about anything as to that.

20 **Q.** But you remember when we looked at Exhibit 20 which
21 referenced a conversation with someone at the Samyang marketing
22 office named Jong-Moon Yui.

23 **A.** Yes. That -- I do.

24 **Q.** Okay. And so you don't have any reason to doubt, do you,
25 Mr. Ku, that Jae-Hwan Jung was emailing the Samyang marketing

1 office on February 28, 2008.

2 **MR. EDELMAN:** Objection. No foundation.

3 **THE COURT:** He can answer that question. Overruled.

4 **THE WITNESS:** Well, if per chance you could first
5 explain to me as to what this is, whether it's an email or not.
6 I'm not too sure what this is.

7 **BY MS. SWEENEY:**

8 **Q.** Can you answer my question?

9 **A.** So I am to suppose that this is an email in giving you an
10 answer? Is that --

11 **Q.** I think you can answer my question --

12 Well, let me ask the court reporter to read back my
13 question.

14 (Question read back by the court reporter.)

15 **A.** Well, there is nothing that I've directly heard in that
16 regard.

17 **Q.** Do you see -- all right. Let's start with the date.

18 2-28-2008. Is that a time when Mr. Jung was involved in
19 gathering market research for use by the members of the sales
20 and planning department that set price?

21 **A.** Well, this individual, too, is but one of many such
22 individuals who would conduct market research and inform us as
23 to such.

24 **Q.** Okay. But you personally -- strike that.

25 You don't have any reason to doubt that he was at this

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1 time -- that is, in 2008 -- communicating with competitors
2 marketing departments.

3 **MR. EDELMAN:** Objection, Your Honor. Asked and
4 answered. Argumentative.

5 **THE COURT:** Overruled. He may answer.

6 **THE WITNESS:** Well, not that I've heard anything
7 directly to such effect.

8 **BY MS. SWEENEY:**

9 **Q.** That wasn't exactly my question. My question was: Do you
10 have any reason to doubt that he was communicating with members
11 of the marketing teams at Ottogi's competitors?

12 **A.** Do I have any reason to doubt? Well, for starters, I
13 don't know as to what the source of this is.

14 **Q.** You don't have to know -- I can tell you, Mr. Ku, this is
15 something that you reviewed at your deposition in 2016. Do you
16 remember that?

17 **A.** I kind of vaguely recall it.

18 **Q.** Okay. Mr. Ku, yesterday you gave some testimony about the
19 surprise visit that Ottogi received on June 3, 2008. Do you
20 recall that?

21 **A.** Yes, I do recall.

22 **Q.** And during that first visit in 2008, the KFTC
23 investigators copied some hard copy documents from the sales
24 and planning department, right?

25 **A.** Yes. That's right.

BANG-WAN KU - DIRECT / SWEENEY

1 **Q.** And they printed some documents from the computers of
2 personnel in the sales and planning department. Right?

3 **A.** Yes, that's right.

4 **Q.** And Ottogi employees took some notes of at least some of
5 the materials that were copied and printed by the KFTC, right?

6 **A.** We weren't able to do that with respect to all of that.

7 **Q.** Understood. But you were able to record at that time at
8 least some of the documents that were copied and printed by the
9 KFTC, right?

10 **A.** So we were able to do that only as to a few at the onset,
11 but later on it just became too voluminous so we couldn't do
12 it.

13 **Q.** And you didn't produce those notes of those documents in
14 this litigation, right?

15 **A.** Well, as for me, whatever we had on hand I provided that
16 to that collection company.

17 **Q.** Now, it wasn't until 2010, when the KFTC conducted its
18 third on-site investigation, that the KFTC searched the
19 computers of the personnel in marketing team 3, right?

20 **A.** No. On the contrary, the marketing team also underwent
21 the 2008 and, basically, all three occasions of the
22 investigations.

23 **Q.** You recall that you gave testimony in April of 2016?

24 **A.** Yes.

25 **Q.** All right. And you testified then that in its first visit

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1 in 2008 the KFTC came and wanted to know who was in charge of
2 setting prices, right?

3 **A.** So, generally, the department responsible for price
4 setting within most Korean companies would be the marketing
5 office. So when those folks came acalling, they first went to
6 our marketing office. And this thing called a sales planning
7 office, most Korean companies doesn't have that. So they went
8 there only later on.

9 **Q.** Didn't you testify at your deposition that because your
10 department was the one that handled price related matters, they
11 asked for that department and they came to your department.

12 **A.** I don't believe I was saying that they first came to my
13 department. Basically, it was a long day, Madam, and I believe
14 I was giving you a birds-eye view, a synopsis, if you will.
15 Basically, it was going to be too long and involved a story if
16 I were to entail to you everything that went on from, say, 9:30
17 to about 5:00 that day. So I gave you the summarized version
18 of it.

19 Basically, I guess I ended up talking mostly in terms of
20 me because I was trying to tell you about what I underwent.

21 **MS. SWEENEY:** Jason, can we play some deposition
22 testimony from Mr. Ku's deposition on --

23 I'm sorry. I can't tell the date of this.

24 The 7th of April. And this is pages 93, line 20, to 95,
25 line 4.

BANG-WAN KU - DIRECT / SWEENEY

1 **MR. EDELMAN:** I'm sorry. Could I have the page
2 number again?

3 **MS. SWEENEY:** Sure. Page 93, line 20.

4 **MR. EDELMAN:** The date of the depo first.

5 **MS. SWEENEY:** The 7th. 93-20 to 95-04.

6 (Video was played but not reported.)

7 **BY MS. SWEENEY:**

8 **Q.** Okay. And then in your declaration that you submitted to
9 the Court in 2016, you said that the KFTC conducted a third
10 on-site investigation in May of 2010. And it was at that time,
11 according to your declaration, that the KFTC searched the
12 computers of marketing team 3. Do you remember that?

13 **A.** By that do you mean to ask if I recall my deposition?

14 **Q.** It was a declaration that you submitted. A written
15 declaration. I can show it to you, if that would be helpful.

16 **A.** I do recall submitting that.

17 **Q.** Okay. And would it surprise you that you said in that
18 declaration that it was in 2010 that the KFTC searched the
19 computers of marketing team 3?

20 **A.** No, I would not find that to be surprising. What I meant
21 by that was that it was in that year, during the third visit of
22 theirs, that the marketing -- that marketing team 3 underwent
23 an intensive -- underwent intensive scrutiny.

24 **Q.** Okay. Changing topics, you testified yesterday that the
25 sales and planning office had nothing to do with overseas

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1 sales. Do you remember that?

2 **A.** Yes. That's right.

3 **MS. SWEENEY:** Okay. I would like to show the witness
4 Exhibits 30 through 33.

5 Pardon me, Elliot. It's not 30 through 33. It's 500,
6 369, 472, and 184.

7 I'll do one at a time.

8 **BY MS. SWEENEY:**

9 **Q.** Mr. Ku, do you recognize Exhibit 472?

10 **A.** Yes. I'm thinking I've seen this.

11 **Q.** Okay. And this is an email from you, right? On August 8,
12 2007?

13 **A.** 2009?

14 **Q.** I'm sorry. Is this an email that you sent on August 8,
15 2007, to the overseas sales division.

16 **A.** I don't see any reference whatsoever as to 2007.

17 (Pause.)

18 I don't see any reference whatsoever as to 2007.

19 **Q.** Okay. Let's -- I'm going to have Ms. Cho hand you all the
20 documents at once, then we'll go through them. I apologize.

21 (Pause.)

22 **Q.** Okay. If we could look first at Exhibit 184. And I think
23 that's the confusion. That's what I was looking at.

24 **MS. SWEENEY:** Do you have -- Mr. Interpreter, do you
25 have Exhibit 184?

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1 **THE INTERPRETER:** Evidently, we do. So let's see how
2 this goes. The one that says 184, right? On the English
3 version, presumably.

4 **BY MS. SWEENEY:**

5 **Q.** Okay. Do you have -- Mr. Ku, do you have Exhibit 184 in
6 front of you?

7 **A.** Yes, that's right.

8 **Q.** And is this an email that you received on July 1, 2008?

9 **A.** Yes, that's correct.

10 **Q.** Okay. And this attaches the request for cooperation for
11 2002, right?

12 **A.** Yes, that is correct.

13 **MS. SWEENEY:** Okay. Your Honor, we offer Exhibit
14 184.

15 **MR. EDELMAN:** No objection, Your Honor.

16 **THE COURT:** It's admitted.

17 (Trial Exhibit 184 received in evidence)

18 **BY MS. SWEENEY:**

19 **Q.** Okay. And do you see in the box in the middle of this
20 page where it has a list of recipients?

21 **A.** Yes, I do.

22 **Q.** Okay. And this shows that the price increase for 2002 was
23 being sent to the overseas sales department, right?

24 **A.** Yes. The overseas sales division is included along with
25 many other departments.

1 **Q.** Okay. Now let's look at Trial Exhibit 500.

2 **THE INTERPRETER:** This is by the interpreter. Your
3 Honor, counsel, there's no Korean version accompanying.

4 **BY MS. SWEENEY:**

5 **Q.** Okay. Let's turn to Exhibit 369. Is there a Korean
6 version of 369?

7 Okay. Mr. Ku, is Exhibit 369 an email that you sent on
8 July 1, 2008?

9 **A.** It's an email I received.

10 **Q.** Oh, pardon me. Yes. Is this an email you received on
11 July 1, 2008?

12 **A.** Yes, that's correct.

13 **Q.** Okay. And this attaches the request for cooperation for
14 2004, right?

15 **A.** Yes, that's correct.

16 **MS. SWEENEY:** Okay. Plaintiffs move to move in
17 Exhibit 369.

18 **MR. EDELMAN:** No objection.

19 **THE COURT:** It's admitted.

20 (Trial Exhibit 369 received in evidence)

21 **BY MS. SWEENEY:**

22 **Q.** Okay. And this document shows that the price increase for
23 2004 was sent to the overseas sales division, right?

24 **A.** Yes. Along with many other divisions to whom this was
25 copied on.

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1 **MS. SWEENEY:** Okay. Plaintiffs move the exhibit of
2 500 into evidence. We don't have a hard copy of the Korean,
3 but we can have both versions displayed on the screen.

4 **THE COURT:** Any objection to 500?

5 **MR. EDELMAN:** As long as he can see it in Korean.

6 **BY MS. SWEENEY:**

7 **Q.** Mr. Ku, can you see Exhibit 500?

8 **A.** Yes.

9 **Q.** And this is an email that you sent to the overseas sales
10 division on August 8, 2007?

11 **THE COURT:** Are we going to put up --

12 **MS. SWEENEY:** We'll can have to come back to that.

13 **BY MS. SWEENEY:**

14 **Q.** Okay. Mr. Ku, you testified that Ottogi was visited by
15 the Ministry of Food and Agricultural and Rural Affairs in
16 2008, and they asked if Ottogi was going to lower its price.
17 Do you recall that testimony?

18 **A.** Yes. I entailed to a certain phone conversation
19 investigation that they conducted.

20 **Q.** Okay. And Ottogi did not decrease its prices that year,
21 correct?

22 **A.** That is correct. Upon inquiring with Ottogi Ramen, the
23 company, they said that there are no factors that warrant a
24 reduction in price and so we simply informed the ministry as to
25 same.

BANG-WAN KU - DIRECT / SWEENEY

1 **Q.** Okay. Yesterday Mr. Edelman showed you some newspaper
2 articles that showed press releases from Nongshim. Do you
3 remember that?

4 **A.** I do recall.

5 **Q.** Okay. And then he also showed you Exhibit 343 which is
6 one of the Ottogi internal memoranda.

7 Do you remember that?

8 **A.** Yes.

9 **Q.** And you looked at some prices for comparing Nongshim's
10 prices to Ottogi's prices. Do you remember that?

11 **A.** Yes. There was something comparing the choolgo prices.

12 **Q.** And, in fact, the two exhibits that you compared are
13 Exhibit 343 and 373. Can you have a look at those, please?

14 **A.** All right. I'm looking at them.

15 **Q.** Okay. And do you have the line that you were comparing?

16 And I would ask if Jason could -- maybe he doesn't have --

17 Do you have 343 and 373? And if you could go to page 3 of
18 343. Okay. And then page 2 of 373.

19 Okay. Do you have that in front of you, Mr. Ku?

20 **A.** Yes, I do.

21 **Q.** Okay. And you were commenting in response to
22 Mr. Edelman's question that the adjusted price at the choolgo
23 rate was different between Nongshim and Ottogi, right?

24 **A.** That is right.

25 **Q.** And this is a comparison of the two companies' flagship

BANG-WAN KU - DIRECT / SWEENEY

1 products, is that right?

2 **A.** Yes, that's right.

3 **Q.** Okay. But if you look over at the adjusted consumer
4 price, that is the consumer price after the increase, the
5 prices are identical. Isn't that right?

6 **A.** The consumer prices are the same, yes.

7 **Q.** Okay. And if you look at the Ottogi price increase list,
8 and this is for Jin Ramen -- and again, this is Exhibit 373 --
9 Ottogi increased its choolgo price and it also at the same time
10 reduced the discount rate, isn't that right?

11 **A.** The company did indeed increase the choolgo price and
12 decrease the discount rate. However, when it comes to the
13 discount rate, there's this concept of that being the actual *de*
14 *facto* choolgo price associated with it. But so anyway, yeah.

15 **Q.** Okay. But the end result was that the consumer price was
16 identical for the Ottogi product and the Nongshim product,
17 right?

18 **A.** At this point in time the consumer price as is indicated
19 on the back side, that -- or, those were identical, yeah.

20 **MS. SWEENEY:** Okay. Can we have a look now at Trial
21 Exhibit 500? And I understand that we can show the Korean on
22 the screen this time.

23 Can we approach the witness, Your Honor?

24 **THE COURT:** Yes, please.

25

1 BY MS. SWEENEY:

2 Q. Okay. Mr. Ku, is Exhibit 500 an email that you sent on
3 August 8, 2007?

4 A. Yes, that's correct.

5 Q. Okay. And this email is sending the price increase
6 information to the overseas sales division, correct?

7 A. That is correct. But even prior to that I would imagine
8 that said overseas sales division probably would have received
9 as much via a request for communication communiqué.

10 Q. So the price increase information is always sent to the
11 overseas sales division.

12 A. Whereas it gets sent to all departments and divisions,
13 among them is the overseas sales division.

14 MS. SWEENEY: Okay. Thank you. I'm going to pass
15 the witness.

16 THE COURT: All right. And 500 is admitted if I
17 didn't say that on the record.

18 MS. SWEENEY: Oh, thank you, Your Honor.

19 (Trial Exhibit 500 received in evidence)

20 CROSS-EXAMINATION

21 BY MR. BIRKHAEUSER:

22 Q. Good morning, Mr. Ku.

23 A. Yes. Good morning, sir.

24 Q. My name is Dan Birkhaeuser, and I represent the indirect
25 purchaser plaintiffs.

1 **A.** Yes.

2 **Q.** Mr. Ku, could you turn in your binder to Exhibit 344?

3 **A.** Okay. I'm there.

4 **Q.** Do you remember discussing Exhibit 344 with your attorney
5 yesterday?

6 **A.** Yes, indeed.

7 **Q.** Okay. Could we publish Exhibit 344? I believe it's
8 admitted.

9 So the point of this document, Mr. Ku, is that Nongshim
10 has already raised its price, and Ottogi is considering whether
11 to raise its price as well. Correct?

12 **A.** Yes, that's correct.

13 **Q.** Okay. And one of the points you wanted to make is that
14 the announcement -- I'm sorry. One of the points that you
15 wanted to make was under number 2, under Samyang, that somebody
16 had consulted with the marketing office, is that right?

17 **A.** Yes. I spoke something about such a thing.

18 **Q.** And what's being reported to you is that Samyang's -- the
19 information that Ottogi had received from Samyang is that sales
20 were at less than 50 percent on track. Is that right?

21 **A.** There's something about how their revenue is not too good.

22 **Q.** 50 percent of what Samyang had been planning to sell.
23 Correct?

24 **A.** Yeah, that's what it is.

25 **Q.** Thank you. Can you turn to Exhibit 343, please?

1 **A.** Okay. I'm looking at it.

2 **Q.** And again, this is -- this is a situation Nongshim has
3 raised its price, Ottogi is considering whether to raise its
4 price, too. Is that correct?

5 **A.** So, let's see. Right. Nongshim has decided that it is
6 going to be raising its prices, and Ottogi has yet to make any
7 determination.

8 **Q.** Ottogi is considering whether to raise its price.

9 **A.** Yes. We are taking that under consideration.

10 **Q.** Okay. And this was the exhibit where you went to the
11 newspaper articles which were identified as Exhibit 781 and you
12 showed us where Nongshim had announced in the press that it was
13 going to raise its price in two days, is that right?

14 **A.** Yes, that's what it is.

15 **Q.** And what's important to you at Ottogi is whether or not
16 Samyang and Yakult are going to raise their price as well, is
17 that correct?

18 **A.** There is that, too, yes.

19 **Q.** And do you see under paragraph 5 on the second page the
20 information about Samyang, sir?

21 **A.** Yes, I see it.

22 **Q.** Do you see where it says that Samyang is weighing the
23 timing of such a price increase?

24 **A.** Yes, that's right.

25 **Q.** With an implementation date of April 1.

1 **A.** Yes. Something to such effect.

2 **Q.** That's more than two months from the date of Exhibit 343?

3 **A.** I'm -- didn't quite follow. I apologize. Say that again.

4 **Q.** April 1 is more than two months from the date of this
5 memo, which is Exhibit 343.

6 **A.** Yes. Between April 1 here and February 28 there's more
7 than, say, a month plus or so of a lag.

8 **Q.** In the newspaper articles that are attached as Exhibit
9 781, do you see anything about Samyang contemplating a price
10 increase on April 1?

11 **A.** Sir, ramen is made pretty much using the same ingredients,
12 all of which ingredients are all imported. And so to say that
13 Nongshim has raised their prices means that all other companies
14 also have come under the same cost burdens.

15 **Q.** I don't believe you answered the question so let me ask it
16 again.

17 Do you see anything in the newspaper articles that you
18 reviewed in Exhibit 781, do you see anything about Samyang
19 weighing the timing of a price increase with an implementation
20 date of April 1?

21 **A.** While there is nothing in terms of the article or articles
22 themselves, that is certainly something sufficiently being
23 talked about within the marketplace.

24 **Q.** Number 2 discusses Yakult, right? Right beneath Samyang?

25 **A.** Yes.

1 **Q.** Is it says plans are -- as for Yakult, plans are to
2 implement a price increase effective April 1? Do you see that?

3 **A.** Yes. And this is information that is more than
4 sufficiently obtainable within the marketplace.

5 **Q.** Including the exact products that are going to be subject
6 to that price increase two months beforehand?

7 **A.** Although you're not able to find out as to the
8 nitty-gritty details upon Nongshim raising its price, the
9 customers make inquiries with all these other companies saying,
10 How are you guys going to raise it? And how is it going to go?
11 That's how it goes.

12 **Q.** Can you turn to Exhibit 644, please?

13 **A.** I'm looking at it.

14 **Q.** Is it true that 644 is the proposal form for increasing
15 the price of ramen dated March 9, 2005?

16 **A.** Yes, that's correct.

17 **Q.** And as noted on the very first page in the approval
18 request, Ottogi was considering raising the price of Jin-Cup,
19 but excluded it at the last minute, as reflected on Exhibit
20 644. Is that correct?

21 **A.** Yes, that's what it reads.

22 **Q.** And if we look at the second page, we see that Jin-Cup is
23 not in the product list, correct?

24 **A.** Right. I am unable to find Jin-Cup here.

25 **Q.** And this is the official -- 644 is the official price

BANG-WAN KU - REDIRECT / EDELMAN

1 approval with the chops on it, correct?

2 **A.** Well, this is -- this is the proposal form that is created
3 for purposes of obtaining approval.

4 **MR. BIRKHAEUSER:** Thank you, sir. I have no further
5 questions.

6 **THE COURT:** All right. Mr. Edelman.

7 **MR. EDELMAN:** I'm trying to activate my timer, Your
8 Honor.

9 Would you activate my timer, please? Thank you.

10 **REDIRECT EXAMINATION**

11 **BY MR. EDELMAN:**

12 **Q.** Okay. Mr. Ku, good afternoon. Good morning, I guess. A
13 little bit left.

14 A few topics I'm going to cover with you. I won't be
15 long, I promise.

16 You were asked just a moment ago by Mr. Birkhaeuser about
17 Ottogi's interest in what Samyang Foods and Yakult might have
18 been doing in raising their prices after Nongshim. Do you
19 recall that line of inquiry?

20 **A.** Yes, I do recall.

21 **Q.** And you talked about how some of that information is
22 readily available from customers.

23 **A.** Yes, that's correct.

24 **Q.** And then he asked you if there was anything in any of the
25 articles that you had talked about yesterday that also talked

1 about what Samyang or Yakult might have been doing?

2 **A.** Yes.

3 **Q.** Could you go back in your notebook, please, to some of the
4 articles that you were looking at yesterday, Exhibit 781-4.

5 If you could display that, Jim.

6 **A.** All right.

7 **Q.** All right. And the reference to Samyang contemplating a
8 price increase in March. Do you see that in the article?

9 **A.** Yes, I do.

10 **Q.** That is the type of thing that you would read about in the
11 newspapers with respect to your competitors?

12 **A.** Yes, that's right.

13 **Q.** Okay. We can put that away.

14 Now, you were asked some questions about Exhibit 384.

15 This was a 2005 final approval memo that went to the KFTC.

16 **A.** Yes.

17 **MR. EDELMAN:** If you don't mind, I can't see it.

18 **Q.** Let's go to the metadata page that counsel showed you.

19 **A.** Yes.

20 **Q.** I'm going to show you --

21 **MR. EDELMAN:** May I approach, Your Honor?

22 **THE COURT:** You may.

23 **BY MR. EDELMAN:**

24 **Q.** I'm going to show you a more complete version of the
25 metadata which you were not shown. And I'm going to mark this

BANG-WAN KU - REDIRECT / EDELMAN

1 as Exhibit 2027.

2 **MR. EDELMAN:** I would offer this into evidence, Your
3 Honor.

4 **THE COURT:** Is there any objection?

5 **MR. BIRKHAEUSER:** I don't see anything that ties this
6 to the document itself. Normally there's a Bates number on the
7 top.

8 **MR. EDELMAN:** We can connect it. Can I have it
9 conditionally admitted and then I'll tie it up precisely later?

10 **THE COURT:** All right. Go ahead.

11 (Trial Exhibit2027 conditionally received in
12 evidence)

13 **BY MR. EDELMAN:**

14 **Q.** All right. I'll represent to you that this pertains to
15 Exhibit 384 which you saw earlier. We can put 384 on the
16 screen, please, just for a second.

17 All right. And just let's go to the next page. All
18 right. So this is the 2005 final memo that you gave to the
19 KFTC. Correct?

20 **A.** One second, please.

21 **Q.** I have the wrong exhibit up. That's not the final one.
22 So while we're looking for the final one, let me just go back
23 to the line of questioning. Let's go to the metadata that we
24 just looked at that Ms. Sweeney showed Mr. Ku.

25 All right. Now let's compare that to the metadata that we

1 marked as Exhibit 2027.

2 **A.** All right.

3 **Q.** All right. And let's have them both on the screen.

4 Exhibit 2027 that we just marked for identification --

5 Do you have that, Jim? No. You may not have that as an
6 exhibit. I just marked it for identification.

7 Maybe I can activate the Elmo.

8 Okay. So this version of the metadata which I'm showing
9 you, do you remember you were asked by Ms. Sweeney whether you
10 printed the version in 2008, and added chops to it?

11 **A.** Yes, I do recall.

12 **Q.** What does this metadata show as the last printed date of
13 this document?

14 **A.** It reads February 28, 2005.

15 **Q.** 2005. Not 2008?

16 **A.** 2005.

17 **Q.** So to follow up on her line of questioning did you, in
18 fact, print this -- the 2005 memo that went to the KFTC, did
19 you print it in 2008 and add the chops to it of Mr. Jung as
20 Ms. Sweeney was suggesting?

21 **A.** So when it comes to the 2005 document, that we were able
22 to locate within the premises of the marketing office. The
23 original, that is. So it was a copy thereof that was
24 submitted.

25 **Q.** Right. And did you print it in 2008 -- she asked you

BANG-WAN KU - REDIRECT / EDELMAN

1 about that -- and add chops to it?

2 **A.** No.

3 **Q.** Okay. And with respect to the last modified date that
4 this shows of July 4, 2008, are you aware, Mr. Ku, that the
5 last modified date of a document may be updated to the current
6 date simply by using the "save as" function in the Word program
7 without changing the content?

8 **A.** Yes, I am aware of that.

9 **Q.** Okay. Let me switch topics. And I want to talk about the
10 2004 memo, which we've talked about two different versions of
11 that today. Ms. Sweeney asked you a lot of questions about it.
12 And you talked about one that had an author by the name of
13 Kang-Hoon Lee, and then you explained that in the process of
14 recreating the document for the KFTC you changed the author to
15 Jae-Hwan Jung. Do you remember that line of questioning?

16 **A.** Yes, I do recall.

17 **Q.** So for purposes of our understanding, is there any
18 difference between those two documents?

19 And why don't we call them up for the record. They're
20 Exhibit 1027 and I believe --

21 **MR. EDELMAN:** Just one moment, please, Mr. Ku.

22 (Pause.)

23 **BY MR. EDELMAN:**

24 **Q.** Well, while we're doing that, let me ask you another
25 question.

BANG-WAN KU - REDIRECT / EDELMAN

1 You were asked a series of questions by Ms. Sweeney about
2 why the document bearing Mr. Jung's name as the author was not
3 produced earlier. Do you that line of questioning?

4 A. Yes.

5 Q. All right. Now, did you turn over your entire computer
6 with all of its contents to be produced in response to this
7 case?

8 A. Yes. That's right.

9 Q. And would the Lee version of the memo and the Jung version
10 of the memo both have been on your computer?

11 A. Yes. That's correct.

12 Q. And the difference between the Lee version of the memo and
13 the Jung version of the memo is only the name Lee in one and
14 Jung in the other. They're otherwise identical. Correct?

15 A. That's right.

16 Q. Were you responsible in this case for the actions of your
17 counsel in producing documents in response to the plaintiffs'
18 request?

19 A. Well, as for me, what I did was to give everything to the
20 company that does the collecting on our behalf. But beyond
21 that, I don't have any involvement.

22 Q. All right. If we can put up 1027 and 368 right next to
23 each other.

24 Can you maybe turn off --

25 MR. EDELMAN: 368 and 1027.

BANG-WAN KU - REDIRECT / EDELMAN

1 I'm sorry. 365.

2 Not working? Do we need --

3 **THE INTERPRETER:** Switch off the Elmo?

4 **MR. EDELMAN:** Turn the Elmo off.

5 **THE CLERK:** No. You're good.

6 **MR. EDELMAN:** Am I good? All right.

7 **BY MR. EDELMAN:**

8 **Q.** So this is the Jung version on the left and the Lee
9 version on the right, correct?

10 **A.** Yes, that's correct.

11 **Q.** And are they identical in all respects except just for the
12 author?

13 **A.** Yes, that's correct.

14 **Q.** And so it's only the version that has Jung as the author
15 that was produced later in the case?

16 **A.** That is correct.

17 **Q.** And so if we go back a little to the Korean, back to the
18 first page of each document -- never mind. We don't need to
19 spend time on that. Let me just switch gears.

20 A few other things I want to cover with you. Can you pull
21 up Exhibit 20?

22 Now you were asked questions about this by Ms. Sweeney and
23 she asked you whether there's -- this document indicates in any
24 respect that you -- that Ottogi received information directly
25 from competitors. Do you recall that?

BANG-WAN KU - REDIRECT / EDELMAN

1 **A.** Yes, I recall.

2 **Q.** Is there any information in this document that, as far as
3 you know, Ottogi received directly from a competitor?

4 **A.** Is there per chance the Korean version?

5 **Q.** Sorry. You don't have it in Korean?

6 Here I have it. I can give you my copy. You do have it?

7 It's on the screen. Okay.

8 **A.** Right. I am unable to find anything to that effect.

9 **Q.** All right. You were also asked about Exhibit -- Trial
10 Exhibit 12. Can we pull that up, please? And this is the list
11 of -- it says details of personnel who participated in the
12 price determination during ramen price increases.

13 **A.** Yes. That's correct.

14 **Q.** And you only show up in the last box.

15 **A.** Yes. That's correct.

16 **Q.** Did you have involvement in pricing determinations at
17 Ottogi prior to September 1, 2007?

18 **A.** Well, prior to that point in time, it was our department
19 that was responsible in terms of the conduct of our domestic
20 pricing as to Ottogi Ramen.

21 **Q.** And were you involved in that effort?

22 **A.** Well, of course.

23 **Q.** Well, then why are you not depicted in any of the boxes
24 before the last one?

25 **A.** Because the only question that was put to me that begat

BANG-WAN KU - REDIRECT / EDELMAN

1 this was something having to do with the choolgo price only.
2 But even prior to that, I was the one responsible for handling
3 all the discounts.

4 Q. And that's what I wanted to ask you about. So when this
5 memo, Exhibit 12, talked about price determination, are you
6 telling us that this has to do with the choolgo price, or the
7 warehouse price?

8 A. That is right. It addresses that and it is limited to
9 that only.

10 Q. All right. But you were involved in the actual price? Or
11 the discount price for the entire period of time?

12 A. That's right.

13 Q. All right. And I want to just probe that distinction for
14 a very short period of time. We've heard a lot of testimony in
15 this case about the list price and competitors' efforts to
16 figure out the list price of their competitors. What's the
17 difference between the list price, or the choolgo price, and
18 the discount price?

19 A. So speaking with respect to our company, so we have a
20 choolgo price, all right. But rarely do we ever actually sell
21 at the choolgo price. Because we discount said price when
22 selling to our customers. And so there exists this notion of
23 an actual choolgo price.

24 Q. Articles we've seen, the efforts to get information from
25 customers that the various ramen companies share in common, is

BANG-WAN KU - REDIRECT / EDELMAN

1 that about the list price or the discount price?

2 **A.** It only speaks in terms of the choolgo price. You're not
3 able to obtain anything on the actual or *de facto* choolgo
4 price.

5 **Q.** That was my question. Is Ottogi able to get information
6 about the actual price or the discount price at which its
7 competitors sold ramen between 2000 and 2010 in Korea?

8 **A.** It couldn't.

9 **Q.** All right. Two more lines of inquiry and then I'm going
10 to sit down.

11 Please look at Trial Exhibit 500. This is a document you
12 were shown by Mr. Birkhaueser a moment ago. What is the date
13 of the email?

14 **A.** August the 8th, 2007.

15 **Q.** All right. Now please look at Exhibit 2009. This is the
16 summary of changes to the export price. Do you see any changes
17 around August of 2007?

18 **A.** Negative.

19 **Q.** All right. My last line of questions. Do you recall the
20 questioning by Ms. Sweeney comparing the final memos that you
21 submitted to the KFTC for 2004 with the interim memo that you
22 used as a basis to draft the final memo?

23 **A.** Yes, I do recall.

24 **Q.** And you were asked a number of questions about the
25 difference between a final memo that you recreated and the

BANG-WAN KU - REDIRECT / EDELMAN

1 interim memo, with focus on the fact that the final memo had
2 all the references to your competitors not in it. Do you
3 remember that line of questioning?

4 **A.** Yes.

5 **Q.** Did you prepare these final memos in a calculated way to
6 strip out the references to your competitors to fool the KFTC?

7 **MR. BIRKHAEUSER:** Objection. Leading.

8 **THE COURT:** Sustained.

9 **BY MR. EDELMAN:**

10 **Q.** Did you -- well, let me do it a little differently. Let's
11 look at Exhibit 384, please.

12 **A.** All right.

13 **Q.** All right. Can we go to the front of this, please?

14 Actually, let's go to Exhibit 343. Is this one of the
15 interim memos?

16 **A.** Yes, that's correct.

17 **Q.** And does this contain discussions about Nongshim on the
18 front page?

19 **A.** Yes, that's right.

20 **Q.** Let's go to the next page. And does this also contain
21 discussions about Samyang?

22 **A.** That's correct.

23 **Q.** Let's go back to the front page.

24 Is this a document that you provided to the KFTC?

25 **A.** That is right. The KFTC does have this document.

BANG-WAN KU - REDIRECT / EDELMAN

1 **Q.** And do we know that because the reference to defendants'
2 Exhibit 130 that we see in English, in Korean refers to a
3 so-gap number, which is an exhibit that the KFTC used in
4 marking documents?

5 **A.** Yes. That's correct.

6 **Q.** You told us earlier that the KFTC copied all of the
7 documents on your computer, right?

8 **A.** That's correct.

9 **Q.** So would the KFTC, then, have had all of the documents
10 that we looked at over the last couple days; the interim memos
11 that have all of the discussions of your competitors?

12 **A.** Yes. They took everything with them.

13 **Q.** Last question. The ramen conference. You said the four
14 -- you named the four competitors that went. Do you remember
15 that?

16 **A.** Yes, that's right.

17 **Q.** All right. Are you aware whether Binggrae attended the
18 ramen conference in 2002?

19 **A.** That I don't quite know about.

20 **MR. EDELMAN:** Okay. No more questions. Thank you.

21 **THE COURT:** Ms. Sweeney, should we take a break now
22 or are you going to be brief?

23 **MS. SWEENEY:** We can take a break.

24 **THE COURT:** Ladies and gentlemen, let's take our
25 second break. We'll be back in 15 minutes. Please remember

1 the admonitions.

2 (Recess taken at 11:45 a.m.)

3 (Proceedings resumed at 11:56 a.m.)

4 (The following proceedings were held in open court, outside the
5 presence of the jury:)

6 **MR. EDELMAN:** Your Honor, while we're waiting, the
7 metadata document I marked as Exhibit 2027; that was a mistake
8 of mine to use that number. Can we make it 2030? It's
9 metadata for Exhibit 363.

10 **THE COURT:** Okay. 2030.

11 **MR. EDELMAN:** Instead of 2027.

12 **THE COURT:** Okay. That I'll do, but you still need
13 to reach show agreement or otherwise.

14 **MR. EDELMAN:** Absolutely.

15 **THE COURT:** You have a problem, Mr. Birkhaeuser?

16 **MR. BIRKHAEUSER:** I do have a problem. Because it
17 was misidentified in the record. And with the questioning of
18 the witness it was identified as Exhibit 384. And then it was
19 described as a different document. And now we're hearing that
20 it's 363.

21 **THE COURT:** This was just 2030, as I heard
22 Mr. Edelman.

23 **MR. BIRKHAEUSER:** It was just --

24 **MR. EDELMAN:** I assigned a number to it that we're
25 already using. That's all I'm trying to change.

1 (The jury entering the courtroom.)

2 **THE COURT:** All right. Please be seated, everybody.

3 And, Ms. Sweeney, before you get going.

4 Ladies and gentlemen, while you were gone the --

5 Mr. Edelman realized that document number 2027 had already been
6 used, so we're changing that to 2030. So the references in
7 Mr. Edelman's questions to document 2027 will now be changed to
8 2030. And that will be the document that is conditionally
9 admitted.

10 (Trial Exhibit 2030 conditionally received in
11 evidence)

12 **MR. EDELMAN:** Thank you, Your Honor.

13 **THE COURT:** All right. Ms. Sweeney, go ahead.

14 RECROSS-EXAMINATION

15 **BY MS. SWEENEY:**

16 **Q.** Mr. Ku, very briefly. The KFTC's first on-site visit
17 occurred on June 3, 2008, right?

18 **A.** That is correct.

19 **Q.** At that time they reviewed the contents of your computer
20 and others in your department and printed out from your
21 computer certain documents, right?

22 **A.** Yes. That's correct.

23 **Q.** And then it was about three weeks later, on July 3 and 4,
24 that you received emails from the marketing team and also from
25 Mr. Young-Hyun Doh that contained the memos that we looked at

1 today and yesterday, is that right?

2 **A.** Are you referring to the 2005 memo?

3 **Q.** And 2004.

4 **A.** Well, what I got from Mr. Doh was the 2005 memo.

5 **Q.** And you received that from Mr. Doh on July 3, correct? Of
6 2008?

7 **A.** Yes, that's correct.

8 **Q.** Okay. And you received from Ho-Joon Kang the other memo
9 on July 3, correct?

10 **A.** Well, whether it was the 3rd or the 4th, it's sometime
11 thereabouts that I got it from Mr. Ho-Joon Kang.

12 **Q.** And I meant the 2004 memo. You understood that, right?

13 **A.** Yes. Yes.

14 **Q.** Okay. And then there were additional on-site visits by
15 the KFTC. And it was in 2010 that the KFTC searched the
16 computer of Jae-Hwan Jong and other members of the marketing
17 committee right -- excuse me -- marketing team.

18 **A.** Yes. That's correct.

19 **MS. SWEENEY:** Okay. Nothing further.

20 **THE COURT:** Mr. Birkhaeuser, anything else?

21 **MR. BIRKHAEUSER:** No, Your Honor.

22 **THE COURT:** Mr. Edelman.

23 **MR. EDELMAN:** Your Honor, I just want to clarify that
24 the metadata document I offered, 2030, which you just brought a
25 new number for, applies to Exhibit 363.

1 **THE COURT:** All right. Was that what you indicated
2 before?

3 **MR. EDELMAN:** I believe I said on the record 384.
4 And so I'm correcting that error. And I'll tie it up with
5 counsel later to make sure there's no --

6 **THE COURT:** Okay. We'll discuss this later.

7 **MR. EDELMAN:** Thank you.

8 **THE COURT:** All right. Thank you very much, Mr. Ku.
9 You're excused.

10 (Witness excused.)

11 **DAE-SIK HONG**,
12 called as a witness for the Defendants, having been duly sworn,
13 testified as follows:

14 **THE CLERK:** Be seated. And if you would please state
15 your full name for the record and spell it for the court
16 reporter.

17 **THE WITNESS:** Yes. My name is Dae-Sik Hong. And I
18 spell my name in English H-O-N-G, last name. D-A-E, S-I-K.

19 **DIRECT EXAMINATION**

20 **BY MS. YU:**

21 **Q.** Okay. Good afternoon, Professor Hong.

22 **A.** Yes, good afternoon.

23 **Q.** Do you speak English?

24 **A.** I do read and write and am able to carry on some
25 conversations in English, but not to the extent where I feel

1 comfortable enough testifying directly in English.

2 **Q.** Okay. Now, what is your current job?

3 **A.** I'm a professor of law at Sogang University located in
4 Seoul, Korea.

5 **Q.** And I believe we prepared some slides to help you explain
6 your testimony today.

7 **MS. YU:** May I approach the witness?

8 **THE COURT:** You may.

9 **MS. YU:** And I'd like to mark this as Trial Exhibit
10 2022.

11 May I publish it to the jury?

12 **THE COURT:** Just move right along, Ms. Yu. Go ahead.

13 **BY MS. YU:**

14 **Q.** And, Jim, can you turn to the first page after the title
15 page?

16 Professor Hong, is this the current version of your
17 resume?

18 **A.** Yes, that is right.

19 **Q.** And can you please briefly describe your educational
20 background?

21 **A.** Yes. I graduated from Seoul National University in 1990.
22 And it was during the same year of my graduation that I passed
23 the bar exam within Korea. And for the next two years I
24 studied at the Judicial Research and Training Institute within
25 South Korea. And the following year I undertook my graduate

1 studies at Seoul National University obtaining a master's
2 degree in law, plus a Ph.D. in law, as well.

3 **Q.** Did you ever study the laws of other countries?

4 **A.** Yes. I served as a visiting scholar at University College
5 London from 2001 through 2002. And I also served as a visiting
6 scholar from 2013 to 2014 here at Cal Berkeley for one year.

7 **Q.** And did you practice law after you graduated from law
8 school?

9 **A.** So following my studies at the Judicial Research and
10 Training Institute, for the next ten years I served as a judge.
11 Following that, for about four years plus, I served as an
12 attorney at a law firm called Yulchon located in Korea.

13 **Q.** And are there any areas of law that you focus on?

14 **A.** Yes. My areas of specialty include the Fair Trade Act of
15 South Korea, consumer laws and regulations, general
16 governmental regulations, government -- strike -- corporate
17 governance structures, and privacy acts as applies to
18 individuals.

19 **Q.** And did you say that you have experience with the Korean
20 Fair Trade Act?

21 **A.** Yes. While in private practice I mostly handled matters
22 involving the Fair Trade Act as part of the Fair Trade Act team
23 within my firm.

24 **Q.** Okay. And do you have any experience with the Korea Fair
25 Trade Commission?

1 **A.** Yes. For certain period of time I also consulted for them
2 -- to them. Also served as --

3 **THE INTERPRETER:** May the interpreter have the last
4 part repeated, please, Your Honor.

5 **THE WITNESS:** I also undertook certain studies as
6 commissioned by the Fair Trade Commission, by the KFTC.

7 **BY MS. YU:**

8 **Q.** I'm just going to call the Korean Fair Trade Commission
9 the KFTC. What is the KFTC?

10 **A.** Typically, the KFTC is referred to within Korea as the
11 economic police -- strike -- the economic prosecutors. And
12 what they're charged with is to implement the Fair Trade Act
13 itself and to stimulate competition and consumerism.

14 **Q.** Okay. And what subject matters have you advised the KFTC
15 on?

16 **A.** There happen to be a number of areas, but among them what
17 is germane to this present action would be how in 2005 I
18 provided some consulting to them as to the investigatory
19 procedures as on the part of the KFTC.

20 So as it were at the time, there were a lot of, say,
21 concerns raised concerning the manner in which the KFTC was
22 going about conducting their investigations.

23 **Q.** What kind of issues?

24 **MR. RAABE:** Your Honor, I object on relevance to
25 2005.

1 **THE COURT:** Okay. Overruled. This is background.

2 **THE WITNESS:** For instance, there were certain
3 concerns having to do with the evidence as acquired by the KFTC
4 as part of their investigations, in that the companies subject
5 to those investigations were not being told as to what they
6 were being investigated about or what the underlying matters
7 were that they were being investigated about, and in spite of
8 their requests to be provided with same. And they further did
9 not know as to what kind of evidence was being involved
10 concerning them.

11 **BY MS. YU:**

12 **Q.** And did the KFTC change their ways?

13 **A.** So my recommendation to the KFTC was something to the
14 effect that as in the -- as in other, say, civil and criminal
15 cases they, too, shall do well to also provide, during the
16 course of their investigations, the details concerning the
17 evidence and so forth to the investigatees after their
18 investigation, to also provide them with the evidence on the
19 allegations.

20 Ultimately, the extent to which the KFTC made any change
21 was limited to the fact that after the conduct of their
22 investigation they come up with something called a review --

23 **THE INTERPRETER:** This would be a legal term of art,
24 and if the gentleman has the equivalent English --

25 **THE COURT:** Okay.

1 **THE WITNESS:** An examination report.

2 **THE INTERPRETER:** Thank you.

3 **THE WITNESS:** And, basically, they decided that
4 they're going to include a list of evidence. Or, an
5 evidentiary list with such.

6 **BY MS. YU:**

7 **Q.** Just a list?

8 **A.** Yes. All they give you is a list.

9 **Q.** Okay. And did you represent any companies being
10 investigated by the KFTC when you were practicing law?

11 **A.** Yes. I represented in excess of 100 companies during the
12 four years plus period of time.

13 **Q.** And did you publish any papers on the KFTC or the Korean
14 Fair Trade Act?

15 **A.** Yes. Whereas I, to date, have published more than 70
16 studies, more than 40 of them have to do with the Fair Trade
17 Act.

18 **Q.** Okay. And does this slide show some of your publications?

19 **A.** Yes. There are some. And I also have some books.

20 **Q.** Okay. Now, who retained you in this case?

21 **A.** So I have been retained by Nongshim Korea and Nongshim
22 America, as well as Ottogi Korea, as well as Ottogi America.

23 **Q.** And is your compensation contingent on what opinions you
24 offer?

25 **A.** That is not the case.

1 **Q.** Okay. So what was your assignment?

2 **A.** So my assignment is twofold. The first has to do with
3 whether or not under Korean law there is a duty to preserve
4 documents. And specifically, the question has to do with
5 whether or not during the investigatory period as by the KFTC
6 Nongshim and Ottogi were under any obligation to preserve
7 documents and whether they were in violation of any applicable
8 law to that extent.

9 Secondly, whereas a Dr. Haggard has opined about the
10 Korean chaebol system, I have been asked to proffer my opinions
11 concerning his opinions.

12 **Q.** Okay. Thank you, Professor Hong.

13 **MS. YU:** Your Honor, I now offer Professor Hong as an
14 expert to testify in this matter in areas about which he was
15 engaged.

16 **THE COURT:** Is there any objection?

17 **MR. RUF:** Subject to the prior briefing.

18 **THE COURT:** All right. You may proceed.

19 **BY MS. YU:**

20 **Q.** Okay. Let's go into your assignment more in detail and
21 we'll take one at a time.

22 Jim, can you turn to the next slide?

23 And Professor Hong, can you please explain what this slide
24 shows?

25 **A.** So this sets forth my conclusions concerning the first

1 aspect of my assignment. Namely, that concerning the -- any
2 obligation concerning document preservation.

3 **Q.** And what was your conclusion?

4 **A.** That is, basically, that none of Nongshim's actions --
5 Nongshim and Ottogi's actions or conducts are in violation of
6 any applicable laws concerning the -- concerning any duty to
7 preserve documents.

8 **Q.** And can you briefly explain the reasons for your
9 conclusions?

10 **THE INTERPRETER:** The interpreter could not hear.

11 **BY MS. YU:**

12 **Q.** Can you briefly explain the reasons for your conclusion?

13 **A.** Yes. There are three.

14 **MR. RAABE:** Objection, Your Honor. I would ask a
15 foundation be laid first before we hear the details.

16 **THE COURT:** Yes. So what did he do in order to make
17 this determination?

18 **BY MS. YU:**

19 **Q.** Sure. And what did you do in order to arrive at your
20 conclusions?

21 **A.** So I first ascertained whether or not under Korean law and
22 applicable KFTC laws and regulations there is any duty or any
23 obligation to preserve documents. And I applied that vis-à-vis
24 the present case and came up with my conclusion.

25 **Q.** And did you review records in this case?

1 **A.** Yes. I verified, say, a number of those opinions as made
2 available through the plaintiffs' counsel.

3 **Q.** Okay. So now can you go through the reasons for your
4 conclusion?

5 **A.** Just a moment ago I misspoke. Not the plaintiffs', but
6 the defendants'.

7 **Q.** Okay. Me (indicating.)

8 Can you briefly go through the reasons for your
9 conclusion?

10 **A.** Firstly, it has to do with the fact that the laws of Korea
11 do not apply to those American entities, meaning Nongshim
12 America and Ottogi America. And the second part is that is
13 because there is no Korean law that requires companies to
14 preserve -- any general law to preserve documents. And
15 thirdly, it's also just because there is an investigation that
16 was begun by the KFTC, does not mean that there arises some
17 sort of a duty on the part of the company undergoing such
18 investigation to preserve documents.

19 **Q.** Okay. And Jim, can you turn to the next slide?

20 And Professor Hong, can you explain what this slide shows?

21 **A.** This entails my reasons as to Professor Haggard's
22 opinions.

23 **Q.** And in arriving at your opinions, did you review Professor
24 Haggard's report?

25 **A.** I did, indeed.

1 **Q.** Okay. And what did you conclude with respect to his
2 opinions?

3 **A.** So under Korean law, there is no corporate structure
4 called chaebol. And just because Dr. Haggard chooses to label
5 something as a chaebol -- assuming there is such a thing --
6 doesn't mean that there exists some high degree of control sort
7 of governance structure as between a mother company and a
8 daughter company.

9 **Q.** Did you have a third?

10 **A.** Ah. So I entailed to my conclusion.

11 **Q.** Okay. Then we'll go into your conclusions more in detail.

12 **A.** All right.

13 **Q.** We'll first deal with the document preservation issue.
14 And first you concluded that the Korean law does not apply to
15 Ottogi America or Nongshim America. Could you please explain
16 why that is the case?

17 **A.** So Korean law applies to Korean nationals and conduct or
18 activities as arising within Korea.

19 Now, there's one proviso in that the KFTC-related
20 regulations do from time to time apply to foreign entities.
21 And that is if, and only if, any conduct as committed by said
22 foreign entities apply or affect anything having to do with the
23 Korean market.

24 Now, when it comes to Nongshim America, Ottogi America,
25 these are California corporations and they simply import into

1 the United States Korean-made products. They do not export to
2 Korea.

3 Q. And if they don't export products to the Korean domestic
4 market, there would be no application of the Korean law. Is
5 that what your opinion is?

6 A. That is right. Because if they do not export anything to
7 Korea, they do not, say, impact the Korean domestic market.

8 Q. Now, what if their parent corporations are being
9 investigated by the KFTC? Does that change anything?

10 A. It has nothing to do with that, because they're completely
11 separate companies.

12 Q. Okay. Now, let's turn to your second opinion about the
13 general document preservation law. And you said that Korea
14 does not have a general duty to preserve documents. So then
15 what are companies supposed to do with their documents?

16 A. Companies have autonomy to come up with their own
17 respective policies to the effect that they can keep them for a
18 time certain or they can discard them.

19 Now, there's one thing that in Korea there is a set of
20 laws concerning privacy-related information. You're supposed
21 to protect individual's privacy. And it is to the effect that
22 after the passage of a time certain, you are to destroy
23 anything containing individual's private information.

24 Q. So is it legal to have a corporate policy of discarding
25 documents older than three years?

1 **A.** Yes. Companies can do that.

2 **Q.** How about one year?

3 **A.** They can be as short as that.

4 **Q.** How about placing capacity limits on email accounts so
5 that emails are automatically deleted if maximum capacity is
6 reached. Is that okay?

7 **A.** Yes. You can so set up your company policy.

8 **Q.** How about placing time limits on email accounts so that
9 anything older than 30 days are automatically deleted? Is that
10 okay?

11 **A.** That's all up to the company's policies.

12 **Q.** How about discarding old laptops when employees leave the
13 company? Is that okay?

14 **A.** If it's owned by the company, then you can do that.

15 **Q.** Now, are companies then required to have a document
16 preservation policy?

17 **A.** There is no law requiring them to do that. The company
18 can choose to do that or not choose to do that.

19 **Q.** And can companies modify their document retention policies
20 and practices from time to time?

21 **MR. RAABE:** Your Honor, I object to leading.

22 **THE COURT:** Overruled. You can continue.

23 **THE WITNESS:** Yes, that's possible.

24 **BY MS. YU:**

25 **Q.** Sir, in your opinion, is there anything wrong with

1 companies not saving decades old emails?

2 **A.** There's no mistake whatsoever concerning that.

3 **Q.** Okay. Now, if a company is under investigation, does that
4 impose a general obligation to preserve documents?

5 **A.** No. That does not give rise to any general duty to
6 preserve.

7 **Q.** And can companies continue with their normal document
8 retention practices during an investigation?

9 **A.** That is right. Just because some sort of an investigation
10 has begun, it does not mean that they need to cease
11 implementing whatever policy they may have.

12 **Q.** And, now, does an investigation by the KFTC impose any
13 specific duties regarding document retention?

14 **A.** There does arise, say, about two kinds of limited sorts of
15 obligations. And the first one has to do with when they're
16 conducting an on-site investigation at your premises. So
17 whilst the authorities are conducting their on-site
18 investigation, you are not allowed to interfere with them.

19 Secondly, the KFTC can make a request for these --
20 provision of documents or material. And if you have it -- so
21 long as you have it, you may not refuse such a request by them.

22 **Q.** Now, before we get further into details about those two
23 limited specific duties, could you give us a little bit more
24 information about how KFTC investigations are conducted?

25 **A.** Certainly. So an investigation by the KFTC can be split

1 up into a general sort of investigation versus an on-site
2 investigation. And typically what they first do is they make
3 an on-site investigation wherein they actually come to your
4 premises. And these sorts of on-site investigations are
5 usually conducted with respect to cartel-related concerns. And
6 typically, the investigators will come to your premises
7 unannounced.

8 And what they do is once they get to your premises they,
9 without informing you as to what they're there for and what
10 they're investigating about, they will halt whatever you're
11 doing and go through your, say, your desk, your computer, your
12 cabinet; and basically, that's how they conduct their
13 investigation. And once they figure they've got the documents
14 that they want to take with them, they leave the premises
15 without informing you as to what they're taking with them.

16 Q. Okay. And then what happens after they leave the premise?

17 A. So since the amount of documents and material that the
18 KFTC folks will take back with them tends to be rather
19 voluminous, they sit down and re-review it, they conduct an
20 analysis. And they, basically, come up with a synopsis that
21 constitutes certain -- or, that tend to show certain
22 allegations.

23 And if, in their minds, they figure they need some extra
24 material, or they need some supplemental -- supplementary
25 material, then they will draft up some sort of an official

1 communiqué and send it to the company. And at times they may
2 require giving of evidence by the company or third parties.
3 That is, testifying.

4 **Q.** Okay. And during these examinations of employees or
5 third-party witnesses, is there a complete record of whenever
6 of this interrogation created?

7 **THE INTERPRETER:** I'm sorry, Your Honor. May the
8 interpreter have that repeated please?

9 **BY MS. YU:**

10 **Q.** Okay. And when these witnesses or employees are
11 interrogated by the KFTC, is there a complete record of witness
12 statements that are created?

13 **A.** So the way these interviews conducted by the KFTC go is
14 that all you have there within the interrogation room would be
15 the investigator and the person subject to the investigation
16 only. There is no stenographer, nobody taking notes or
17 anything.

18 And so the government employee will, basically, pose a lot
19 of questions, have the person testify, and cherry-pick only
20 that which in that person's mind is going to be helpful to
21 their investigation.

22 **Q.** Does the KFTC investigator create a document after the
23 interrogation?

24 **A.** Yes. And that would be a document that is created by the
25 investigator. And it is something on which the investigatee,

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1 the person subject to the investigation, basically, is asked to
2 sign off.

3 **Q.** And what is that document called?

4 **A.** It is called a protocol of examination.

5 **Q.** And what happens if the employee sees something incorrect
6 and refuses to sign?

7 **A.** Well, of course, the person --

8 **MR. RAABE:** Objection. Sorry. Relevance and
9 foundation to this case.

10 **THE COURT:** It's sustained.

11 Lay a foundation, if you can.

12 **MS. YU:** Okay. It's background information, Your
13 Honor.

14 **THE COURT:** I want more.

15 **BY MS. YU:**

16 **Q.** So now what happens after the KFTC conducts its on-site
17 investigation, and the KFTC conducts its interrogation, and the
18 KFTC requests specific information or documents? What does it
19 do?

20 **A.** So if in the investigator's own determination there are
21 grounds for allegations to be made, then the investigator will
22 create an examination report and float that up to the
23 commission. And, basically, essentially, lodge a -- lodge this
24 as an agenda item.

25 **Q.** Okay. And what do they do after a report is prepared?

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1 Does the KFTC commissioner make a decision about it?

2 **A.** That's right. So what they do is they have the company
3 present there, conduct a hearing, and then come to a certain
4 decision.

5 **Q.** Okay. So the KFTC conducts both an investigation and also
6 the adjudication of the accusations. Is that right?

7 **A.** Right. So although we were talking about different
8 departments, it is still within the same big organization.

9 **Q.** Okay. And so when does the KFTC investigation end?

10 **A.** So the investigation concludes upon the investigator's
11 preparation of the examination report.

12 **Q.** And your basis for knowing -- the basis of your knowledge
13 about how the KFTC conducts its investigation, does that arise
14 from your experience representing clients being investigated by
15 the KFTC?

16 **A.** Yes, that's correct.

17 **Q.** And have you represented any clients who were interrogated
18 by the KFTC?

19 **A.** Yes.

20 **Q.** Okay. And have you had any experience where your clients
21 did not want to sign the Protocols of Examination, but they
22 were forced to?

23 **MR. RAABE:** Relevance and foundation in this case,
24 Your Honor.

25 **THE COURT:** Yes. Sustained.

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1 BY MS. YU

2 Q. Okay. Professor Hong, now let's go back to the company's
3 duties you discussed earlier. You said that there were two
4 specific and limited duties, and one of them pertains to an
5 on-site investigation.

6 What are companies required to do during an on-site
7 investigation?

8 A. Sure. So when the official comes over to investigate you,
9 you must neither block or prevent them from coming into your
10 premises nor prevent them from going to whatever location they
11 desire to go to within your premises.

12 And when they say they want to open up one of your
13 cabinets or when they say they want to access your computer,
14 you must allow them to do so.

15 And when they ask that you bring over certain materials,
16 you must do so.

17 Q. And when does this duty start?

18 A. So for those unannounced visits by them, it would be the
19 moment when the investigator, investigators, appear at your
20 premises.

21 Q. And can these duties ever start before the KFTC on-site
22 investigation starts?

23 A. Well, had they but pre-informed you, maybe; but being
24 unannounced, there is no way for you to get to know about that
25 in advance.

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1 **Q.** So does the duty only start when the KFTC investigation,
2 on-site investigation starts?

3 **A.** That's right. That's in the case of an unannounced
4 visitation by them.

5 **Q.** And when does this duty end?

6 **A.** So it all depends on the case. So sometimes when they
7 conclude their investigation, on that very day that's when it
8 ceases.

9 Sometimes for investigations that last a number of days,
10 then, for instance, they say, Oh, we'll come again tomorrow.
11 Then -- and when they have certain, say, locations within your
12 premises that they have not fully gone through, before they
13 leave they basically seal things off, okay, and you must not,
14 you know, disturb those.

15 So, but even those, after so many days have passed and
16 when they finish their investigation, that's when your duty
17 ceases.

18 **Q.** Okay. So when the KFTC investigators leave your company
19 and they don't tell you that they are coming back, is that the
20 end of the first duty that you're referencing?

21 **A.** Yes, that's correct.

22 **Q.** And can companies reassume their normal document retention
23 practices at that point?

24 **A.** Yes, that's correct.

25 **Q.** Now, in situations where there are successive on-site

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1 investigations that span several years, is the duty ongoing
2 throughout that entire time period?

3 **A.** There is no investigation that can last over the span of
4 so many years because when they are there investigating you,
5 you're basically paralyzed as to your current affairs. So they
6 can come out and then they can go back and then later on they
7 can come back out again.

8 But the point is, when they are there, you must not
9 interfere or, you know, stop them from doing what they are
10 there for.

11 **Q.** So your duty only lasts for those --

12 **A.** But your duty exists and is given rise to only on those
13 occasions when they are there for each investigation.

14 **Q.** And I think you've answered my question.

15 So outside of the specific dates on which the KFTC
16 investigators were on-site at Nongshim Korea and Ottogi Korea,
17 was it a problem that these companies resumed their normal
18 document retention practices?

19 **MR. RAABE:** Foundation, Your Honor.

20 **THE COURT:** Do you want to have him make an
21 assumption? Otherwise, you need a foundation for this.

22 **BY MS. YU**

23 **Q.** Okay. Professor Hong, you have reviewed the records in
24 this case and you have heard the testimony of witnesses in this
25 case in connection with your opinion; is that right?

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1 **MR. RUF:** Objection, Your Honor. That's overbroad
2 with respect to the materials that were listed as having been
3 relied upon in the report.

4 **THE COURT:** All right. Sustained.

5 **BY MS. YU**

6 **Q.** Okay. And did you review the records in this case related
7 to the specific dates on which Nongshim Korea and Ottogi Korea
8 were subjected to these on-site investigations?

9 **A.** Yes. Those sorts of dates were disclosed within the
10 opinion documents that were submitted to the Court in this
11 matter.

12 **Q.** So outside of the specific dates on which the KFTC
13 investigators were on-site at Nongshim Korea and Ottogi Korea,
14 was it a problem that they resumed their normal document
15 retention practices?

16 **MR. RUF:** Object to form, Your Honor.

17 **THE COURT:** Sustained. If you do it as a
18 hypothetical, you can get the answer you're looking for, but
19 don't do it as a fact.

20 **BY MS. YU**

21 **Q.** So if the company resumes its normal document retention
22 practices outside of the specific dates on which the KFTC
23 investigators are on-site, is that a violation of any law?

24 **A.** So as I indicated earlier, once the on-site investigation
25 concludes, they may resume their regular day-to-day activities

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1 and, as such, there is no problem.

2 **Q.** Okay. And assume that a company was subjected to an
3 on-site investigation on June -- in June 2008 and again in
4 January 2010, and assume that they modified their company-wide
5 email policy in March 2009, would that be a problem?

6 **MR. RAABE:** I object, Your Honor.

7 **MS. YU:** It's a hypothetical.

8 **THE COURT:** On the basis of?

9 **MR. RAABE:** Same objection I have been making, Your
10 Honor.

11 **THE COURT:** Sustained. And it's an incomplete
12 hypothetical.

13 **MS. YU:** Okay.

14 **THE COURT:** Don't draw it more specifically to the
15 facts of this case.

16 **BY MS. YU**

17 **Q.** Professor Hong, if a company is subjected to an on-site
18 investigation on day one and then they are subjected to another
19 on-site investigation a year later, in the meantime between
20 those two dates if they modify their company-wide email policy,
21 is that a violation of any law?

22 **MR. RAABE:** I object, Your Honor.

23 **THE COURT:** For?

24 **MR. RAABE:** We're doing indirectly what we can't do
25 directly.

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1 **THE COURT:** Sustained.

2 **BY MS. YU**

3 **Q.** Okay. So outside of the specific days on which the KFTC
4 investigators are on-site, is it a violation of law to change
5 your company-wide email policy?

6 **A.** That is not the case.

7 **Q.** And based on your experience with the KFTC investigations,
8 your experience with the KFTA and your review of the record in
9 this case, did Nongshim Korea or Ottogi Korea violate the duty
10 not to interfere with on-site investigations?

11 **MR. RUF:** Object.

12 **MR. RAABE:** Object on foundation grounds, Your Honor.

13 **THE COURT:** Sustained.

14 **BY MS. YU**

15 **Q.** Professor Hong, did you review -- in forming your
16 opinions, did you review the record in this case about the
17 conduct of Nongshim Korea and -- or Ottogi Korea employees
18 during the on-site investigations?

19 **MR. RUF:** Your Honor, could the foundation be more
20 specific, because I -- it's not clear what the record would be.
21 There were references in his report to two discrete
22 declarations.

23 **THE COURT:** Yeah.

24 **MS. YU:** And I was about to get to that question.

25 **THE COURT:** Okay. So go ahead.

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1 MS. YU: Okay.

2 BY MS. YU

3 Q. Did he...

4 THE COURT: So you can -- yeah, answer that specific
5 question.

6 A. So I cite a certain example within the pages of my
7 declaration, so that is something I based upon the statements
8 as by the company employees.

9 BY MS. YU

10 Q. Okay. And do you recall whose statements you reviewed in
11 forming your opinion?

12 A. Yes. So there was, for instance, a statement by Mr. Ku,
13 who was here testifying just a moment ago, as was there one by
14 Mr. Doh.

15 Q. Okay. And based on your review of those records, did you
16 see any violation of duty not to interfere with on-site
17 investigations?

18 A. We're talking about any conduct during the on-site
19 investigations, yeah?

20 Q. Yes.

21 A. I have not come across any record or indication that there
22 was any such conduct during the course of the on-site
23 investigations.

24 Q. Okay. Now, let's turn to the second duty you spoke about
25 earlier, relating to Requests For Information. And can you

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1 please explain what that duty requires?

2 **A.** So the KFTC is allowed to ask for any documents, material
3 or things of the company being investigated and if the company
4 has any such document, material or thing on hand, then they
5 have a duty to provide such.

6 **Q.** Now, are companies required to suspend normal document
7 retention practices upon receiving this Request For
8 Information?

9 **A.** No, that is not the case. The only thing is if, say, you
10 have a request to document in your possession, then you have a
11 duty to provide that to them.

12 **Q.** And typically, based on your experience, when the
13 companies are responding to these specific requests, do they
14 know what type of materials the KFTC has secured through the
15 on-site investigation?

16 **MR. RAABE:** Objection. Foundation, your Honor.

17 **THE COURT:** Overruled. You can answer.

18 **A.** No, that is not the case. So as I mentioned earlier, they
19 are not informed by the KFTC as to what the KFTC is taking back
20 with them as a result of the on-site investigation. So while
21 being in the dark, they are here having to respond to this
22 additional, say, request for the submission of materials.

23 **BY MS. YU**

24 **Q.** So would they have an incentive to withhold documents?

25 **MR. RUF:** Your Honor, objection. Lacks foundation.

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1 This witness is not qualified to give that opinion.

2 **THE COURT:** Yes. Sustained.

3 **BY MS. YU**

4 **Q.** You have represented companies under investigation by the
5 KFTC; right?

6 **A.** Yes, that's correct.

7 **Q.** Okay. And now you've also represented companies who were
8 subjected to an on-site investigation; right?

9 **A.** Yes, I have.

10 **Q.** And did you represent companies in responding to the
11 specific information requests made by the KFTC?

12 **A.** Yes, I have.

13 **Q.** And based on your experience, would there be an incentive
14 to withhold documents?

15 **MR. RUF:** Objection.

16 **MR. RAABE:** Relevance, Your Honor.

17 **THE COURT:** Sustained. It's not -- it's not a
18 question you're going to be able to get an answer from this
19 witness in this Court, so I would move on.

20 **MS. YU:** Okay.

21 **BY MS. YU**

22 **Q.** If a company does not have a document specifically
23 requested by the KFTC, is that a violation of the law?

24 **MR. RAABE:** Objection, Your Honor. Foundation and
25 relevance to this case.

THE COURT: Overruled. You can answer that question.

A. No, that's not the case. You don't get to submit what you don't have.

BY MS. YU

Q. Okay. Now, you've mentioned that the KFTC investigation terminates upon when the KFTC examination report is prepared. Do these duties continue after that point?

A. So the duties I spoke of in terms of the duty that is given rise to on account of the on-site investigation or on account of the request for certain documents and what-have-you. So to the extent that there is no further investigation that is conducted following the preparation of the examination report, there also are no associated duties thereafter.

Q. Professor Hong, have you heard the testimony of Mr. Bang-Wan Ku that was given at trial in this case?

A. Yes, I have.

Q. And, in your opinion, did Mr. Ku violate any KFTA law?

MR. RUF

his expertise and inappropriate.

THE COURT. Sustained. On all grounds.

MS. 10. Okay. I have no further questions at this

DIRECT EXAMINATION

BY MR. DOSKER

Q. Good afternoon. Mark Dosker from Nongshim Company,

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1 Limited, Nongshim America, Inc. Good afternoon, sir.

2 **A.** Hello, sir.

3 **Q.** What does the word "chaebol" mean?

4 **A.** So chaebol is a word that is often used within Korea. It
5 is used in reference to companies that are rather rich.

6 **Q.** And have you reviewed the written opinions of the
7 plaintiffs' Political Science Professor Haggard in this case?

8 **A.** Yes, I have.

9 **Q.** Have you also reviewed the transcript of the testimony
10 Professor Haggard gave at trial in this case?

11 **A.** I also got to see that, too.

12 **Q.** What is your understanding of Professor Haggard's views as
13 to the significance that the concept of chaebols has to this
14 case?

15 **A.** So Professor Haggard is rendering a definition based upon
16 some subjective understanding on his part, subjective view on
17 his part.

18 And, further, the professor is of the opinion that if
19 there is a concern that constitutes a chaebol and a company
20 belongs to such a chaebol, then by that there exists a very
21 high degree of governance relationship that obtains.

22 **Q.** And by what has come through the interpreter is
23 "governance relationship," is that also control?

24 **A.** That is right. So it means that in the case of two
25 companies, there is no independence between them, no autonomy

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1 between them, where one or the other exercises control over the
2 other.

3 **Q.** Do you agree with Professor Haggard's opinions in that
4 regard?

5 **MR. RAABE:** Your Honor, I object to the form of that
6 question in terms of characterization.

7 **THE COURT:** You can answer. Overruled.

8 **A.** I'm a legal scholar and the gentleman is a political
9 scientist and his learned opinions do not have any bearing on
10 Korean law.

11 **BY MR. DOSKER**

12 **Q.** A little while ago this afternoon you testified that there
13 is no corporate forum called chaebol. So my question is: What
14 are the different corporate forums which exist under Korean
15 law?

16 **THE INTERPRETER:** Your Honor, just because of the
17 legality or legal aspects of this, this interpreter is going to
18 want to also have the gentleman state this in English, if
19 that's permissible.

20 **THE COURT:** That would be fine.

21 (Brief pause.)

22 **A.** So in Korea there are, for instance, a limited company, a
23 joint limited company, a corporation, a partnership, and a
24 limited partnership.

25

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1 BY MR. DOSKER

2 Q. What type of corporation is Nongshim Korea?

3 A. It's a corporation, quote/unquote listed corporation.

4 Q. And when you say "listed corporation," is that the same
5 thing as a publicly traded corporation?

6 A. Yes, as openly traded on the stock market.

7 Q. And what type of corporation is Ottogi Korea?

8 A. That also is a corporation that is listed and traded on
9 the stock market.

10 Q. So, likewise, Ottogi Korea is publicly traded on the stock
11 market; is that right?

12 A. Yes, that's correct.

13 Q. What type of corporation is Nongshim America?

14 A. Nongshim America is not a Korean company. I would believe
15 that to be an entity set up under California law.

16 Q. And what about Ottogi America?

17 A. That also is not a Korean entity. It is a company here,
18 so I would also believe that to be something founded pursuant
19 to local laws.

20 Q. So in Korea are corporations distinguished based on
21 Professor Haggard's criteria that he discusses in his opinions?

22 A. No. So under the KFTC related regulations, they define
23 what a cartel is, but that is different from the criteria under
24 which Professor Haggard is opining.

25 Q. Is Nongshim Korea a chaebol?

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1 A. Well, so chaebol is not a legal term of art and there does
2 not exist something called a chaebol under Korean law. So, you
3 know, there isn't any such construct.

4 Q. And would your answer be the same as to Ottogi Korea?

5 A. All right. Under Korean law it cannot be regarded a
6 chaebol.

7 Q. So under Korean law does labeling something as a chaebol
8 indicate anything about control between the parent company and
9 its subsidiary?

10 A. That is not the case. So even if something belongs to the
11 same, let's say, collection of companies, the question as to
12 whether there is a control type of structure that obtains, that
13 is something that you still need to look into.

14 Q. Now, sir, you were a judge in Korea for ten years and
15 you're presently a law professor in Korea; right?

16 A. That is correct.

17 Q. And have you prepared a slide to use in explaining to the
18 jury how the existence of control between a parent corporation
19 and its subsidiary is determined under Korean law?

20 A. Yes. That would be disclosed on page eight of the slide
21 that I've brought with myself.

22 **MR. DOSKER:** So, Jim, would you please publish page
23 eight of Exhibit 2022?

24 (Document displayed)

25

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1 BY MR. DOSKER

2 Q. Sir, this is your slide?

3 A. Yes, that's correct.

4 Q. Using it, would you please explain to the jury the factors
5 by which the existence of control between a parent corporation
6 and its subsidiary is determined under Korean law?

7 MR. RAABE: Relevance, Your Honor.

8 THE COURT: So, ladies and gentlemen, you are
9 reminded that the Korean law, as I instructed you, is
10 irrelevant to the determinations that you need to make in your
11 case. However, if you want to proceed, you may.

12 BY MR. DOSKER

13 Q. If you could briefly summarize for the jury?

14 A. So in Korea in going about determining whether there is a
15 high degree of control as between two companies, there are
16 certain, say, factors that the Korean Supreme Court has decided
17 are telling. There are basically nine factors in that regard.

18 So to sum up, the -- one of the tests is you look at the
19 equity ownership as between the companies.

20 You also want to look at whether there is any influence as
21 exerted upon one by the other and the method of such.

22 You also look at whether there are any day-to-day, say,
23 instructions or orders coming from the one to the other.

24 And you also want to see if there is any overlapping, say,
25 executives or directorship between the companies.

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1 You also look at the perceptions on the part of each of
2 the two companies as applies to themselves and the other.

3 You also see if the financial accounting is integrated.

4 You also see if the companies are independently able to
5 exercise their respective judgments in terms of the realm of
6 their own business affairs.

7 You also look at the conduct and behavior, whereas within
8 the market by the business companies.

9 And you also look at how a certain company will -- may
10 have arrived at certain conduct or activities in comporting
11 themselves.

12 And so courts in Korea will basically look at these
13 various factors and make an independent determination on a
14 case-by-case basis based upon evidence.

15 Q. Thank you.

16 Now, in preparing your written reports of your opinions in
17 this case, did you review the materials that you listed and
18 cited in your reports?

19 A. I did indeed.

20 Q. And did the materials that you cited in your reports
21 include various sworn declarations of witnesses in this case?

22 A. That is right, yes.

23 Q. Based upon the materials that you have reviewed and the
24 analysis that you've done, in your opinion, based on the proper
25 factors under Korean law for determining control, did Nongshim

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1 Korea substantively control Nongshim America?

2 **MR. RAABE:** Relevance, Your Honor.

3 **THE COURT:** Sustained.

4 **BY MR. DOSKER**

5 **Q.** Did you see any evidence in the material that you
6 reviewed, as cited in your reports in this case, to suggest
7 that Nongshim Korea directed the day-to-day business management
8 of Nongshim America?

9 **A.** I was not able to find any evidence that would suggest
10 that from amongst the material that I reviewed.

11 **Q.** And same question as to whether there was any evidence
12 that Ottogi Korea directed the day-to-day business management
13 of Ottogi America?

14 **MR. RAABE:** Objection, Your Honor. That's the jury's
15 question.

16 **THE COURT:** I think if Mr. Dosker limits that to the
17 documents that he reviewed, I think he's --

18 **MR. DOSKER:** That's how I tried to phrase the
19 question, Your Honor.

20 **THE COURT:** You didn't actually.

21 **MR. DOSKER:** Well, I was trying to keep it short.

22 **BY MR. DOSKER**

23 **Q.** I'll ask the same question as to Ottogi Korea that I asked
24 a moment ago as to Nongshim Korea.

25 Based on all the information and evidence that you

PROCEEDINGS

1 reviewed, as cited in your two reports in this case, did you
2 see any evidence that Ottogi Korea directed the day-to-day
3 business management of Ottogi America?

4 **A.** I was not able to come across anything that would suggest
5 that from amongst the material I reviewed.

6 **Q.** And as you concluded in paragraph 15 of your second report
7 in this case, did you find any evidence to suggest that either
8 Nongshim America or Ottogi America did not act independently
9 with respect to details of daily operations, such as setting
10 ramen prices?

11 **A.** No, not in terms of any of the material I reviewed.

12 **MR. DOSKER:** I pass the witness, Your Honor. Thank
13 you.

14 **THE COURT:** All right.

15 **MR. RUF:** Your Honor, I am happy to tell you we have
16 no questions.

17 **MR. RAABE:** Me either.

18 **THE COURT:** All right. So you're excused. Thank you
19 very much.

20 (Witness excused.)

21 **THE COURT:** All right. So, ladies and gentlemen, we
22 are done for the day. So please remember the admonitions and
23 thank you, as always, for your attention to this. We're
24 getting to the end, but we're not there yet.

25 So I will look forward to seeing you in the morning.

PROCEEDINGS

1 Thank you.

2 (Jury exits the courtroom at 1:30 p.m.)

3 **THE COURT:** All right. I have a question for
4 Mr. Edelman. And I'm now looking at document 2030.

5 **MR. EDELMAN:** Yes.

6 **THE COURT:** Which was this metadata document.

7 **MR. EDELMAN:** Yes.

8 **THE COURT:** Were you saying that the -- when you
9 started, that this was not related to Trial Exhibit 384?

10 **MR. EDELMAN:** Correct. I meant to identify the
11 document. I think it's 363 that I was intending to refer to.

12 **THE COURT:** Okay. So in the morning I'd like to hear
13 what corrective measures I should take with respect to that
14 mistake.

15 **MR. EDELMAN:** Sure.

16 **MR. RAABE:** One very quick matter, Your Honor. The
17 stipulation.

18 **THE COURT:** Yes.

19 **MR. RAABE:** From the plaintiffs' perspective, we
20 believe that it ought to be marked as a substantive exhibit and
21 provided to the jury for a couple of reasons.

22 The primary reason being, I'm not sure juries understand
23 when a stipulation is read to them what it means and what the
24 import is. I'm not sure that they knew at the time they should
25 be taking notes about what the substance of it was.

PROCEEDINGS

1 So I think it's appropriate, specifically because it
2 references exhibits that are relevant to it. If they didn't
3 catch that the first time around, it's important for them to
4 have it in front of them.

5 **THE COURT:** All right. Mr. Edelman?

6 **MR. EDELMAN:** Sure. I think -- I was referring to
7 the 2005 memo, and that's what I called it. But then when I
8 referenced the exhibit number, that's where I --

9 **THE COURT:** Okay. So this is actually a different
10 issue, I think.

11 **MR. EDELMAN:** Oh, I'm sorry. I'm sorry.

12 **THE COURT:** This is the Exhibit 1029, which was the
13 written stipulation that you agreed to --

14 **MR. EDELMAN:** Oh, I'm sorry.

15 **THE COURT:** -- with respect to the exhibits.

16 **MR. EDELMAN:** So you're asking that the exhibit be
17 admitted?

18 **MR. RAABE:** Yes, your Honor.

19 **MR. EDELMAN:** I don't think that the exhibit needs to
20 be admitted. I think they have conducted examination on the
21 point, went through it with the witness, were able to cross
22 examine on what happened. And in light of that, I don't see
23 the reason for the stipulation going into evidence.

24 **THE COURT:** I'm not inclined -- I've never -- the
25 stipulations are stipulations. I read it slowly and carefully.

PROCEEDINGS

1 There was a lot of examination on it. So I don't think -- I'm
2 not inclined to give it further.

3 **MR. RAABE:** Yes, your Honor.

4 **THE COURT:** All right. Thank you, all.

5 **THE INTERPRETER:** Your Honor, may the interpreter
6 inquire as to whether there are any other Korean witnesses and,
7 if not, may the interpreters thank the Court and be excused?

8 **THE COURT:** You can always thank the Court.

9 (Laughter.)

10 **THE COURT:** Are there any other Korean witnesses that
11 would be expected for the remainder of the trial, I guess is
12 what is being asked?

13 **MR. EDELMAN:** Not on our end, Your Honor.

14 **MR. DOSKER:** Not on our end.

15 **MR. RAABE:** Not on our side, Your Honor.

16 **THE COURT:** Okay. Thank you. You both performed
17 extraordinary service. Thank you.

18 **THE INTERPRETER:** Thank you, your Honor. And thank
19 you to everybody.

20 (Whereupon at 1:33 p.m. further proceedings were
21 adjourned until December 12, 2018 at 7:30 a.m.)

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3 **CERTIFICATE OF REPORTERS**
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5

6 We certify that the foregoing is a correct transcript from
7 the record of proceedings in the above-entitled matter.
8

9 Vicki Eastvold
10 Vicki Eastvold, RMR, CRR
11
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13 Debra L. Pas
14 Debra L. Pas, CSR 11916, CRR, RMR, RPR
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16 Tuesday, December 11, 2018
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